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**HOUSE BILL 1184**

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**State of Washington**

**69th Legislature**

**2025 Regular Session**

**By** Representatives Schmidt, Couture, and Jacobsen

Prefiled 01/07/25.

1 AN ACT Relating to creating a narrow exemption from overtime  
2 provisions for certain nonprofits and small businesses; amending RCW  
3 49.46.130; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** (1) Washington's nonprofit organizations  
6 improve the lives of thousands of Washingtonians and are a part of  
7 the state's economy. Nonprofit organizations serve communities in a  
8 variety of ways, such as supporting veterans, stewarding the  
9 environment, supporting performing arts and education, fostering and  
10 supporting families, promoting economic development, and much more.

11 (2) Small businesses also are a significant part of the state's  
12 economy and are an important part of communities across the state.

13 (3) The legislature recognizes that due to the nature and  
14 structure of smaller nonprofits and small businesses, these entities  
15 and their ability to continue to meet their communities' needs are  
16 being jeopardized by the state overtime rules for exempt employees.  
17 When fully implemented in 2028, the minimum salary to be classified  
18 as a salaried exempt employee will be two and a half times the  
19 statewide minimum wage for a 40-hour week, which is estimated to be  
20 approximately \$93,000 a year and the highest salary threshold in the  
21 nation. Therefore, the legislature is creating a narrow exemption

1 from overtime provisions to allow more flexibility to these entities  
2 and their salaried employees.

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

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

11 (2) This section does not apply to:

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

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

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

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

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

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

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

38 (h) Any industry in which federal law provides for an overtime  
39 payment based on a workweek other than forty hours. However, the

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

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

17 (j) Any individual licensed under chapter 18.85 RCW unless the  
18 individual is providing real estate brokerage services under a  
19 written contract with a real estate firm which provides that the  
20 individual is an employee. For purposes of this subsection (2)(j),  
21 "real estate brokerage services" and "real estate firm" mean the same  
22 as defined in RCW 18.85.011; and

23 (k)(i) Any individual employed by a nonprofit organization or  
24 small business and who is paid a predetermined fixed salary of not  
25 less than 1.5 times the minimum wage prescribed in RCW 49.46.020 for  
26 a 40-hour workweek and meets the duties-related criteria for  
27 exemption under RCW 49.46.010(3)(c).

28 (ii) For the purposes of this subsection (k):

29 (A) "Nonprofit organization" means an organization described in  
30 section 501(c)(3), (5), and (6) of the internal revenue code of 1986,  
31 as amended, that: (I) has no more than 50 full-time equivalent  
32 employees at any one physical worksite; or (II) delivers essential  
33 services, such as child care or shelter programs, and is required to  
34 maintain a certain staffing level due to state-mandated staffing  
35 ratios; or (III) operates a 24-hour, seven day a week program that  
36 requires continuous 24-hour, seven day a week staffing to meet  
37 critical community needs, such as emergency shelters, respite care,  
38 group homes, and publicly funded behavioral health services;

39 (B) "Small business" means any business entity, including a sole  
40 proprietorship, corporation, partnership, or other legal entity, that

1 is owned and operated independently from all other businesses, and  
2 that has a total of 50 or fewer full-time equivalent employees.

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

7 (a) The regular rate of pay of the employee is in excess of one  
8 and one-half times the minimum hourly rate required under RCW  
9 49.46.020; and

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

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

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

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

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

31 (5) No public agency shall be deemed to have violated subsection  
32 (1) of this section with respect to the employment of any employee in  
33 fire protection activities or any employee in law enforcement  
34 activities (including security personnel in correctional  
35 institutions) if: (a) In a work period of twenty-eight consecutive  
36 days the employee receives for tours of duty which in the aggregate  
37 exceed two hundred forty hours; or (b) in the case of such an  
38 employee to whom a work period of at least seven but less than  
39 twenty-eight days applies, in his or her work period the employee  
40 receives for tours of duty which in the aggregate exceed a number of

1 hours which bears the same ratio to the number of consecutive days in  
2 his or her work period as two hundred forty hours bears to twenty-  
3 eight days; compensation at a rate not less than one and one-half  
4 times the regular rate at which he or she is employed.

5 (6) (a) Beginning January 1, 2022, any agricultural employee shall  
6 not be employed for more than 55 hours in any one workweek unless the  
7 agricultural employee receives one and one-half times that  
8 agricultural employee's regular rate of pay for all hours worked over  
9 55 in any one workweek.

10 (b) Beginning January 1, 2023, any agricultural employee shall  
11 not be employed for more than 48 hours in any one workweek unless the  
12 agricultural employee receives one and one-half times that  
13 agricultural employee's regular rate of pay for all hours worked over  
14 48 in any one workweek.

15 (c) Beginning January 1, 2024, any agricultural employee shall  
16 not be employed for more than 40 hours in any one workweek unless the  
17 agricultural employee receives one and one-half times that  
18 agricultural employee's regular rate of pay for all hours worked over  
19 40 in any one workweek.

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

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

30 (c) This subsection does not apply to dairy employees entitled to  
31 back pay or other relief as a result of being a member in the class  
32 of plaintiffs in *Martinez-Cuevas v. DeRuyter Bros. Dairy*, 196 Wn.2d  
33 506 (2020).

34 (8) For the purposes of this section, "agricultural employee"  
35 means any individual employed: (a) On a farm, in the employ of any  
36 person, in connection with the cultivation of the soil, or in  
37 connection with raising or harvesting any agricultural or  
38 horticultural commodity, including raising, shearing, feeding, caring  
39 for, training, and management of livestock, bees, poultry, and  
40 furbearing animals and wildlife, or in the employ of the owner or

1 tenant or other operator of a farm in connection with the operation,  
2 management, conservation, improvement, or maintenance of such farm  
3 and its tools and equipment; (b) in packing, packaging, grading,  
4 storing or delivering to storage, or to market or to a carrier for  
5 transportation to market, any agricultural or horticultural  
6 commodity; or (c) (~~in~~) in commercial canning, commercial  
7 freezing, or any other commercial processing, or with respect to  
8 services performed in connection with the cultivation, raising,  
9 harvesting, and processing of oysters or in connection with any  
10 agricultural or horticultural commodity after its delivery to a  
11 terminal market for distribution for consumption. An agricultural  
12 employee does not include a dairy employee.

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

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