
SUBSTITUTE HOUSE BILL 1475

State of Washington

52nd Legislature

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By House Committee on Commerce & Labor (originally sponsored by Representatives G. Fisher, Ebersole, Heavey, R. King, Cole, Dorn, Hine, Leonard, Valle, Rasmussen, Phillips, Jones, Hargrove, Brekke, Pruitt, Sprenkle, Wang, Dellwo, Orr, Nelson, Spanel, Prentice, O'Brien and Wineberry).

Read first time February 18, 1991.

1 AN ACT Relating to conditions of employment; amending RCW
2 49.46.130; and adding new sections to chapter 49.46 RCW.

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) (~~No employer shall employ any of his employees for a work week~~
7 ~~longer than forty hours unless such employee receives compensation for~~
8 ~~his employment in excess of the hours above specified at a rate not~~
9 ~~less than one and one-half times the regular rate at which he is~~
10 ~~employed, except that the provisions of this subsection (1) shall)) No
11 employer shall employ any employee more than forty hours in any work
12 week unless the employee receives compensation for his or her
13 employment at a rate of pay not less than one and one-half times the
14 employee's regular rate of pay for all hours worked over forty hours in
15 the work week.~~

1 (2) This section does not apply to:

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

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

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

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

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

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

24 ~~(2) No public agency shall be deemed to have violated subsection~~
25 ~~(1) of this section with respect to the employment of any employee in~~
26 ~~fire protection activities or any employee in law enforcement~~
27 ~~activities (including security personnel in correctional institutions)~~
28 ~~if: (a) In a work period of twenty eight consecutive days the employee~~
29 ~~receives for tours of duty which in the aggregate exceed two hundred~~
30 ~~and forty hours; or (b) in the case of such an employee to whom a work~~

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

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

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

1 over the industrial activity of the particular employer within this
2 state(~~(:—PROVIDED FURTHER, That)~~). For the purposes of this
3 subsection, "industry" (~~(as that term is used in this section shall~~
4 ~~mean))~~ means a trade, business, industry, or other activity, or branch,
5 or group thereof, in which individuals are gainfully employed (section
6 3(h) of the Fair Labor Standards Act of 1938, as amended (Public Law
7 93-259).

8 (3) No public agency shall be deemed to have violated subsection
9 (1) of this section with respect to the employment of any employee in
10 fire protection activities or any employee in law enforcement
11 activities, including security personnel in correctional institutions,
12 if the employee receives compensation at a rate not less than one and
13 one-half times the regular rate at which he or she is employed for
14 tours of duty that:

15 (a) In the aggregate, in a work period of twenty-eight consecutive
16 days, exceed two hundred twelve hours in the case of employees in fire
17 protection activities and one hundred seventy-one hours in the case of
18 employees in law enforcement activities; or

19 (b) In the case of an employee to whom a work period of at least
20 seven but less than twenty-eight days applies, in the aggregate exceed
21 a number of hours which bears the same ratio to the number of
22 consecutive days in his or her work period: (i) For an employee in
23 fire protection activity, as two hundred twelve hours bears to
24 twenty-eight days, or (ii) for an employee in law enforcement
25 activities, as one hundred seventy-one hours bears to twenty-eight
26 days.

27 NEW SECTION. Sec. 2. (1) Except as otherwise provided in this
28 section, no employer may require an employee to work: (a) More than
29 eight hours in any work day; or (b) more than forty hours in any work

1 week. However, this section does not prohibit an employee from
2 voluntarily agreeing to work more than eight hours in any work day or
3 more than forty hours in any work week, subject to the requirements of
4 RCW 49.46.130.

5 (2) Notwithstanding subsection (1) of this section, an employee may
6 be required to work up to ten hours in a work day if the employer's
7 work week is based on four ten-hour days in a work week. An employee
8 is not prohibited from voluntarily agreeing to work more than ten hours
9 in a work day, subject to the requirements of RCW 49.46.130.

10 (3)(a) An employer may petition the department for a variance from
11 the requirements of subsection (1) of this section if at least eighty
12 percent of the employer's employees in the affected work unit or, if
13 the employees are represented by an exclusive bargaining
14 representative, in the affected bargaining unit vote by secret ballot
15 to approve a written proposal for regularly scheduled hours of work of
16 more than eight hours in a work day or of more than forty hours in a
17 work week. The agreement shall not permit the employer to require any
18 employee to work more than twelve hours in a work day or more than an
19 average of forty-two hours per work week in four consecutive work
20 weeks.

21 (b) The department shall adopt rules providing for the election
22 procedures and documentation required to apply for a variance under
23 this subsection. The rules shall include provisions that require
24 employee approval of the variance no less than annually, and that make
25 supervisors ineligible to vote. For the purposes of this subsection
26 (b), "supervisor" means any employee having authority, in the interest
27 of the employer, to hire, transfer, suspend, lay off, recall, promote,
28 discharge, assign, reward, or discipline other employees, or
29 responsibly to direct them, or to adjust their grievances, or
30 effectively to recommend such action, if in connection with the

1 foregoing the exercise of such authority is not of a merely routine or
2 clerical nature, but requires the use of independent judgment.

3 (c) Nothing in this subsection limits the application of RCW
4 49.46.130 to the employees covered by a variance under this subsection.

5 (4) This section does not apply to:

6 (a) An employer who employs fewer than twenty-five individuals;

7 (b) An individual exempt under RCW 49.46.010(5) or 49.46.130(2),
8 except for RCW 49.46.130(2)(f);

9 (c) An individual employed in fire protection or law enforcement
10 activities; or

11 (d) Work performed in emergency situations that endanger public
12 health and safety, including, but not limited to, fires, natural
13 disasters, civil disorders, utility interruptions, emergency medical
14 services regulated under chapter 18.73 RCW, services required by the
15 armed forces of the United States, or other situations determined by
16 the department to be emergencies endangering public health and safety.

17 No exemption under this section shall be deemed to provide an
18 exemption under RCW 49.46.130.

19 NEW SECTION. **Sec. 3.** (1) No employer may discharge or in any
20 manner discriminate against an employee because the employee exercises
21 any of the rights provided in section 2 of this act, including the
22 right to vote under section 2(3) of this act.

23 (2) Any employee who believes that he or she has been discharged or
24 otherwise discriminated against in violation of this section may,
25 within one year after such violation occurs, file a complaint with the
26 director alleging such discrimination. Upon receipt of a complaint,
27 the director shall cause an investigation to be made as the director
28 deems appropriate. If after investigation, the director determines
29 that the provisions of this section have been violated, the director

1 may bring an action in superior court of the county in which the
2 violation is alleged to have occurred against the person or persons
3 alleged to have violated the provisions of this section. If the
4 director declines to investigate a complaint of discrimination under
5 the provisions of this section, or declines to institute legal action
6 following an investigation, the employee may institute the action on
7 his or her own behalf after receiving notice of the director's decision
8 to not investigate or not initiate legal action on the case. In any
9 action under this section, the superior court shall have jurisdiction,
10 for cause shown, to restrain violations of subsection (1) of this
11 section and to order all appropriate relief including rehiring or
12 reinstatement of the employee to his or her former position with back
13 pay.

14 (3) Within ninety days of the receipt of the complaint filed under
15 this section, the director shall notify the complainant of the
16 determination under subsection (2) of this section.

17 NEW SECTION. **Sec. 4.** If employees are covered by an unexpired
18 collective bargaining agreement containing terms that conflict with
19 section 2 of this act, and the agreement expires on or after the
20 effective date of this act, section 2 of this act shall apply to these
21 employees on the first day following expiration of the collective
22 bargaining agreement.

23 NEW SECTION. **Sec. 5.** Sections 2 through 4 of this act are
24 each added to chapter 49.46 RCW.