

HOUSE BILL REPORT

HB 2190

As Reported By House Committee On:

Commerce & Labor

Title: An act relating to the application of the state wage and hour laws without altering the minimum wage.

Brief Description: Affecting the application of the state wage and hour laws without altering the minimum wage.

Sponsors: Representatives McMorris and Clements.

Brief History:

Committee Activity:

Commerce & Labor: 3/3/97, 3/5/97 [DPS].

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives McMorris, Chairman; Honeyford, Vice Chairman; Boldt; Clements and Lisk.

Minority Report: Do not pass. Signed by 3 members: Representatives Conway, Ranking Minority Member; Wood, Assistant Ranking Minority Member; and Hatfield.

Staff: Chris Cordes (786-7103).

Background: Washington law establishes a state minimum wage, overtime compensation, prevailing wage requirements for public works, and various other minimum wage standards. These requirements are enforced by the Department of Labor and Industries which has authority to investigate wage violations, order the payment of wages owed to workers, and prosecute actions to collect wages. Criminal penalties apply to various violations and employees are permitted to bring civil actions to collect unpaid wages.

STATE MINIMUM WAGE ACT

Intent statement. The statement of intent under the state minimum wage act (MWA) provides that a minimum wage is necessary to establish minimum standards of employment for employees and to encourage employment opportunities.

Exemptions. Certain employees are exempt from the minimum wage and overtime requirements of the MWA, including executive, administrative, or professional employees. Payment of compensation or allowing time off in addition to a salary is not a factor in determining the exempt status of executive, administrative, or professional employees.

Exemptions from the overtime requirements of the MWA include:

- (1) truck or bus drivers subject to the federal Motor Carrier Act if overtime pay is reasonably equivalent to state requirements.
- (2) industries for which federal law provides for an overtime payment based on a work week other than 40 hours.

ENFORCEMENT OF STATE WAGE CLAIMS

Under various state wage and hour laws, an employer who pays an employee less than the amount to which the employee is entitled is liable in a civil action to the employee, even if the employee agreed to work for less. If the employee is successful in recovering judgment for wages owed, attorneys' fees are assessed against the employer, unless the recovery is equal to or less than the amount the employer admitted to be owing.

An employer is also liable in a civil action to the employee or employee's assignee for collecting a rebate from employees' wages and for paying a lower wage than obligated by law or contract when the paying of lower wages is willful and is done with intent to deprive. In this case, the employer is subject to exemplary damages of twice the amount of wages withheld.

The department may investigate wage violations, order employers to pay and institute actions to collect after a determination that sums are owed, and take assignment of wage claims and prosecute actions for employees who are financially unable to employ counsel.

Washington law provides a three-year statute of limitation to bring a civil action for a number of causes, including an action on an unwritten contract (six years for written contract). The statute of limitations is two years for any action with no other limit specified.

FEDERAL WAGE AND HOUR LAW

Intent. Among the stated policies of Congress in enacting federal wage and hour laws are the protection of commerce from burdensome practices, protection of collective bargaining, and defining and limiting court jurisdiction.

Exemptions. Under the federal Fair Labor Standards Act (FLSA) , "employee" for minimum wage and overtime requirements does not include certain computer systems analysts or programmers who are compensated on an hourly basis of at least \$27.63 per hour.

Some industries are given alternative methods to comply with overtime requirements. For example, employers in retail and service establishments are not in violation of the overtime requirements when an employee works over 40 hours per week if the regular rate of pay of the employee is more than one and one-half times the federal minimum wage and more than half of the employee's compensation represents commissions on goods or services. In the hospital industry, the employer is not in violation if an employee agrees to a workweek of fourteen consecutive days for purposes of overtime compensation and the employee is paid overtime for work over eight hours per day and 80 hours in the 14-day period.

Employer liability. Employers are not subject to penalty for not paying minimum wage or overtime when:

- (1) the employee activities are related to:
 - traveling to and from the actual place of employment.
 - activities that take place before or after work.
 - using a employer's vehicle for normal commuting under an agreement between the employer and employee or employee representative.

However, the employer is not relieved of penalties if the activity is compensable by a contract, or by a custom or practice, in effect at the time of the activity.

- (2) the employer acted or failed to act in good faith reliance on a written rules, approval, or interpretation of the U.S. Department of Labor, or an enforcement practice or policy of the department. This defense bars an action even if the rule, interpretation, or practice of the department is modified or rescinded, or is ruled invalid by a court, after the act or omission.

Civil actions. Under the FLSA, a civil action against an employer for wage and hour violations must be brought within two years after the cause of action accrued, except that a cause of action arising out of a willful violation may be brought within three years. An employee may only bring a wage claim action on his or her own behalf, unless all parties agree, or unless other similarly situated employees give prior written consent.

Summary of Substitute Bill:

STATE MINIMUM WAGE ACT

Intent statement. The intent statement of the state minimum wage act (MWA) is modified to state that:

- (1) the MWA should parallel federal wage and hour law to aid and foster interstate and intrastate commerce. Adoption of the state overtime law was intended to create conformity between state and federal wage and hour law. The exemption for an industry in which "federal law provides for a work week other than 40 hours" was intended to incorporate all alternative federal premium guarantee standards.
- (2) the purposes of MWA include protection of commerce from burdensome practices, protection of collective bargaining, and defining and limiting court jurisdiction.

Exemptions. An exemption is provided from the MWA for certain computer systems analysts or programmers with specified job duties who are compensated on an hourly basis at no less than \$27.63 per hour.

The MWA overtime compensation exemptions are modified as follows:

- (1) an exempted executive, administrative, or professional employee does not lose the MWA exemption when subject to deductions from pay for absences of less than a full day or full week except for the week of actual deduction from the employee's pay.
- (2) truck or bus drivers are exempt from the MWA without the restriction that overtime pay must be reasonably equivalent to state requirements.
- (3) the exemption for an industry that has a federal law overtime payment based on "other than 40 hours per week" is changed to a "federal overtime payment method" with specific reference to the method used for employees of retail or service establishments whose regular rate of pay is at least one and one-half times the federal minimum wage and is more than half commissions, and to the method used for hospital employees whose overtime pay is calculated on a 14-day period.

Employer liability. Employers are not subject to liability or punishment for not paying state minimum wages or overtime compensation under the following circumstances:

- (1) the employee activities are related to:
 - traveling to and from the actual place of employment.
 - activities that take place before or after work.
 - using a employer's vehicle for normal commuting under an agreement between the employer and employee or employee representative.

However, the employer is not relieved of penalties if the activity is compensable by a contract, or by a custom or practice, in effect at the time of the activity.

- (2) if the employer acted or failed to act in good faith reliance on a written rules, approval, or interpretation of the department, or an enforcement practice or policy of the department. This defense bars an action even if the rule, interpretation, or practice of the department is modified or rescinded, or is ruled invalid by a court, after the act or omission.

ENFORCEMENT OF STATE WAGE CLAIMS

Civil action provisions for wage and hour law violations are generally consolidated under one chapter of law with the following changes:

- (1) A civil action against an employer for unpaid wages must be commenced within two years of the date that the claim for wages accrued.
- (2) An employee may bring a wage claim action only on his or her own behalf, unless all parties agree, or unless other similarly situated employees give prior written consent.

The department's authority to enforce wages claims is modified as follows:

- (1) the department's authority to order the payment of wages owed to employees and to institute actions to collect the wages is deleted. The department may demand payment from the employer and may institute civil actions for wage claims when claims are assigned to the department by the employee.
- (2) the department's authority to take assignments of wage claims and institute actions on behalf of employees is not restricted by the requirement that the employee be financially unable to employ counsel.

The awarding of exemplary damages in a wage claim action is modified to exclude the awarding of exemplary damages when the action is brought by an employee's assignee.

An action claiming exemplary damages must be brought under the consolidated civil action provisions.

Substitute Bill Compared to Original Bill: The original bill's consolidation of the wage and hour recordkeeping requirements into one chapter of law are deleted and all changes related to recordkeeping are deleted. Provisions are deleted that made the awarding of exemplary damages discretionary with the court and that removed authority to award such damages for contracted wage violations. The substitute adds provisions relating to an employer's liability for "before and after work" when the activities are compensable under a contract or by custom or practice.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: A business task force worked hard to put together this proposal to remove useless regulatory barriers related to requirements under the state's wage and hour laws. This bill will remove inconsistencies with federal wage and hour laws and reduce the considerable expense and substantial penalties that employers now face when trying to comply with a labyrinth of requirements. The bill also fills in gaps in state law that are now covered by federal law. It makes recordkeeping consistent under all the wage and hours laws. This will encourage voluntary compliance because employers will be able to understand what is required. The intent of the bill is to have the recordkeeping requirements apply to all sectors, including agriculture and the public sector. The requirement related to employees who self-report their hours is an innovative approach to issues surrounding telecommuting, for example. The incorporation of federal alternative methods of satisfying overtime requirements will benefit the retail industry and conform state and federal law. There is a need to clarify the exempt status of salaried workers who have involuntary deductions from their salaries for absences from work. The bill's provisions will permit flexibility so that employers can allow absences without permanently losing the exemption for all salaried employees. There is also a need to clarify the exempt status for the trucking industry. This bill would add an exemption that now exists in federal law for highly trained and highly compensated computer systems analysts. This exemption is needed to keep Washington's competitive advantage in the high tech industry relative to other states. The bill clarifies the statute of limitations for wage and hour violations which was understood to be two years until recent court decisions.

Testimony Against: This is a highly complex bill that has been introduced too late in the session to allow for thorough analysis of its impacts. Although it potentially has large impacts on employees, no employee representatives were invited to participate in the discussions leading up to drafting the bill. There are some computer analysts who have begun law suits regarding their overtime compensation. A number of provisions in the bill seem to restrict rights and remedies. Further review is needed before these provisions can be understood.

Testified: (In support) Arthur Jackson, Bon Marche; Patrick Madden; Doug Kight, Boeing Company; William Grady; Peter Fooks and Royal Larison, FDSI Consulting; Doug Smith; Bill Adamucci, Best Consulting; and Tony Thein, Holland America Line Westours, Inc. (Opposed) Robby Stern, Washington State Labor Council.