
SENATE BILL 5239

State of Washington

56th Legislature

1999 Regular Session

By Senators Fraser, Franklin and Kline

Read first time 01/18/1999. Referred to Committee on Labor & Workforce Development.

1 AN ACT Relating to overtime compensation for commissioned
2 salespersons; amending RCW 49.46.130; creating a new section; and
3 declaring an emergency.

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

5 **Sec. 1.** RCW 49.46.130 and 1998 c 239 s 2 are each amended to read
6 as follows:

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

12 (2) This section does not apply to:

13 (a) Any person exempted pursuant to RCW 49.46.010(5). The payment
14 of compensation or provision of compensatory time off in addition to a
15 salary shall not be a factor in determining whether a person is
16 exempted under RCW 49.46.010(5)(c);

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

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

3 (d) Seasonal employees who are employed at concessions and
4 recreational establishments at agricultural fairs, including those
5 seasonal employees employed by agricultural fairs, within the state
6 provided that the period of employment for any seasonal employee at any
7 or all agricultural fairs does not exceed fourteen working days a year;

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

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

17 (g) Any individual employed (i) on a farm, in the employ of any
18 person, in connection with the cultivation of the soil, or in
19 connection with raising or harvesting any agricultural or horticultural
20 commodity, including raising, shearing, feeding, caring for, training,
21 and management of livestock, bees, poultry, and furbearing animals and
22 wildlife, or in the employ of the owner or tenant or other operator of
23 a farm in connection with the operation, management, conservation,
24 improvement, or maintenance of such farm and its tools and equipment;
25 or (ii) in packing, packaging, grading, storing or delivering to
26 storage, or to market or to a carrier for transportation to market, any
27 agricultural or horticultural commodity; or (iii) commercial canning,
28 commercial freezing, or any other commercial processing, or with
29 respect to services performed in connection with the cultivation,
30 raising, harvesting, and processing of oysters or in connection with
31 any agricultural or horticultural commodity after its delivery to a
32 terminal market for distribution for consumption;

33 (h) Any industry in which federal law provides for an overtime
34 payment based on a work week other than forty hours, except retail or
35 service establishments which shall be subject to the requirements of
36 subsection (1) of this section. However, the provisions of the federal
37 law regarding overtime payment based on a work week other than forty
38 hours shall nevertheless apply to employees covered by this section
39 without regard to the existence of actual federal jurisdiction over the

1 industrial activity of the particular employer within this state. For
2 the purposes of this subsection, "industry" means a trade, business,
3 industry, or other activity, or branch, or group thereof, in which
4 individuals are gainfully employed (section 3(h) of the Fair Labor
5 Standards Act of 1938, as amended (Public Law 93-259);

6 (i) Any hours worked by an employee of a carrier by air subject to
7 the provisions of subchapter II of the Railway Labor Act (45 U.S.C.
8 Sec. 181 et seq.), when such hours are voluntarily worked by the
9 employee pursuant to a shift-trading practice under which the employee
10 has the opportunity in the same or in other work weeks to reduce hours
11 worked by voluntarily offering a shift for trade or reassignment.

12 ~~(3) ((No employer shall be deemed to have violated subsection (1)~~
13 ~~of this section by employing any employee of a retail or service~~
14 ~~establishment for a work week in excess of the applicable work week~~
15 ~~specified in subsection (1) of this section if:~~

16 ~~(a) The regular rate of pay of the employee is in excess of one and~~
17 ~~one-half times the minimum hourly rate required under RCW 49.46.020;~~
18 ~~and~~

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

22 ~~In determining the proportion of compensation representing~~
23 ~~commissions, all earnings resulting from the application of a bona fide~~
24 ~~commission rate is to be deemed commissions on goods or services~~
25 ~~without regard to whether the computed commissions exceed the draw or~~
26 ~~guarantee.~~

27 ~~(4))~~ No employer of commissioned salespeople primarily engaged in
28 the business of selling automobiles, trucks, recreational vessels,
29 recreational vessel trailers, recreational vehicle trailers,
30 recreational campers, manufactured housing, or farm implements to
31 ultimate purchasers shall violate subsection (1) of this section with
32 respect to such commissioned salespeople if the commissioned
33 salespeople are paid the greater of:

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

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

1 (~~(5)~~) (4) No public agency shall be deemed to have violated
2 subsection (1) of this section with respect to the employment of any
3 employee in fire protection activities or any employee in law
4 enforcement activities (including security personnel in correctional
5 institutions) if: (a) In a work period of twenty-eight consecutive
6 days the employee receives for tours of duty which in the aggregate
7 exceed two hundred forty hours; or (b) in the case of such an employee
8 to whom a work period of at least seven but less than twenty-eight days
9 applies, in his or her work period the employee receives for tours of
10 duty which in the aggregate exceed a number of hours which bears the
11 same ratio to the number of consecutive days in his or her work period
12 as two hundred forty hours bears to twenty-eight days; compensation at
13 a rate not less than one and one-half times the regular rate at which
14 he or she is employed.

15 NEW SECTION. **Sec. 2.** Nothing in this act shall be construed to
16 alter the terms, conditions, or practices contained in any collective
17 bargaining agreement in effect on the effective date of this act until
18 the expiration date of such agreement.

19 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
20 preservation of the public peace, health, or safety, or support of the
21 state government and its existing public institutions, and takes effect
22 immediately.

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