
SUBSTITUTE SENATE BILL 6120

State of Washington

56th Legislature

2000 Regular Session

By Senate Committee on Labor & Workforce Development (originally sponsored by Senators Fairley, Prentice, Costa, Brown, Kohl-Welles, Jacobsen, Patterson, Gardner, Kline and Spanel)

Read first time 01/31/2000.

1 AN ACT Relating to mandatory overtime; adding new sections to
2 chapter 49.46 RCW; and creating new sections.

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

4 NEW SECTION. **Sec. 1.** LEGISLATIVE INTENT. The legislature finds
5 that workers are often required to work long days and even longer
6 weeks. These practices hurt working families, make affordable child
7 care difficult to find, and lead to higher stress levels and industrial
8 injury and occupational disease rates. These practices limit
9 employment opportunities to a smaller number of workers rather than
10 extend employment opportunities to a larger number of workers. Thus,
11 it is the intent of the legislature that workers not be required to
12 work overtime.

13 NEW SECTION. **Sec. 2.** MANDATORY OVERTIME PROHIBITED. (1) Except
14 as otherwise provided in this act, no employer may require an employee
15 to work: (a) More than eight hours in any work day; or (b) more than
16 forty hours in any work week. An employee is not prohibited from
17 voluntarily agreeing to work more than eight hours in any work day or
18 more than forty hours in any work week.

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

6 NEW SECTION. **Sec. 3.** OVERTIME COMPENSATION REQUIRED. Nothing in
7 this act limits the application of RCW 49.46.130.

8 NEW SECTION. **Sec. 4.** EMPLOYEE DEFINED. For the purposes of this
9 act, "employee" includes any individual employed by an employer except:

10 (1) An individual exempt under RCW 49.46.010(5) (a) through (n) or
11 RCW 49.46.130(2) (a) through (i);

12 (2) An individual employed by a private utility and performing
13 emergency work necessary for the public health and safety, if the
14 utility has exhausted reasonable efforts to have the work performed
15 voluntarily by other employees;

16 (3) An individual employed in fire protection, law enforcement, or
17 emergency medical services;

18 (4) An individual performing work in emergency situations that
19 endanger public health and safety, including, but not limited to,
20 fires, natural disasters, civil disorders, utility interruptions,
21 services required by the armed forces of the United States, including
22 work performed under a contract with the United States department of
23 defense when the work is necessary because of the declaration of a
24 national emergency, or other situations determined by the department to
25 be emergencies endangering public health and safety;

26 (5) An individual employed by an employer packing or processing
27 perishable agricultural or horticultural commodities, or perishable
28 freshwater or saltwater fish or shellfish or their products; or

29 (6) An individual employed by an employer registered as an aquatic
30 farmer with the department of agriculture in accordance with RCW
31 75.58.040, and performing work defined as aquaculture in RCW 15.85.020.

32 NEW SECTION. **Sec. 5.** VARIANCE. (1) An employer may petition the
33 department for a variance from the requirements of section 2 of this
34 act if at least eighty percent of the employer's employees in the
35 affected work unit or, if the employees are represented by an exclusive
36 bargaining representative, in the affected bargaining unit vote by

1 secret ballot to approve a written proposal for regularly scheduled
2 hours of work of more than eight hours in a work day or of more than
3 forty hours in a work week. The agreement may not permit the employer
4 to require any employee to work more than twelve hours in a work day or
5 more than an average of forty-two hours per work week in four
6 consecutive work weeks.

7 (2)(a) The department shall adopt rules providing for the election
8 procedures and documentation required to apply for a variance under
9 this section. The rules shall include provisions that require employee
10 approval of the variance no less than annually, and that make
11 supervisors ineligible to vote.

12 (b) For the purposes of this section, "supervisor" means any
13 employee having authority, in the interest of the employer, to hire,
14 transfer, suspend, lay off, recall, promote, discharge, assign, reward,
15 or discipline other employees, or responsibly to direct them, or to
16 adjust their grievances, or effectively to recommend such action, if in
17 connection with the foregoing the exercise of such authority is not of
18 a merely routine or clerical nature, but requires the use of
19 independent judgment.

20 NEW SECTION. **Sec. 6.** CONTINUOUS PRODUCTION OPERATIONS. (1)
21 Notwithstanding section 2 of this act, an employee may be required to
22 work part of the next succeeding work shift following the work shift
23 completed by the employee if:

24 (a) The work is required because of an unanticipated event,
25 including, but not limited to, employee illness or emergency repair of
26 production equipment, but not including a need to increase production
27 to meet an increase in market demand, and the unanticipated event has
28 or may halt a continuous production operation;

29 (b)(i) In good faith, the employer has exhausted reasonable
30 attempts to obtain voluntary work during the succeeding shift; or

31 (ii) The employee has critical skills and expertise that are
32 required for the work; and

33 (c) As requested by the employee, the employer has assisted the
34 employee to acquire safe transportation to his or her residence
35 following the succeeding shift, and has assisted the employee to
36 address child care or other family obligations successfully. At the
37 time of requiring the employee to work part of the next succeeding

1 shift, the employer shall inform the employee of the employer's
2 obligation under this section.

3 (2) This section may not permit an employer to require any employee
4 to work more than twelve consecutive hours, or to work during more than
5 two consecutive work shifts, or to require, in any calendar month, more
6 than sixteen hours beyond the hours of work that may be required under
7 section 2 of this act.

8 (3) For the purposes of this section:

9 (a) "Continuous production operation" means a workplace that
10 routinely operates twenty-four hours a day in the following industries:

11 (i) Primary metal processing, in an industry assigned the major group
12 standard industrial classification code "33" or the equivalent code in
13 a successor classification system by the employment security
14 department; or (ii) paper and allied products, in an industry assigned
15 the major group standard industrial classification code "26" or the
16 equivalent code in a successor classification system by the employment
17 security department.

18 (b) "Standard industrial classification code" means the code
19 identified in RCW 50.29.025(6)(c).

20 NEW SECTION. **Sec. 7.** DISCRIMINATION PROHIBITED. (1) No employer
21 may discharge or in any manner discriminate against an employee because
22 the employee exercises any of the rights provided in this act,
23 including the right to vote under section 5 of this act.

24 (2) Any employee who believes that he or she has been discharged or
25 otherwise discriminated against in violation of this section may,
26 within one year after such violation occurs, file a complaint with the
27 director alleging such discrimination. Upon receipt of a complaint,
28 the director shall cause an investigation to be made as the director
29 deems appropriate. If, after investigation, the director determines
30 that the provisions of this section have been violated, the director
31 may bring an action in superior court of the county in which the
32 violation is alleged to have occurred against the person or persons
33 alleged to have violated the provisions of this section. If the
34 director declines to investigate a complaint of discrimination under
35 the provisions of this section, or declines to institute legal action
36 following an investigation, the employee may institute the action on
37 his or her own behalf after receiving notice of the director's decision
38 not to investigate or initiate legal action on the case. In any action

1 under this section, the superior court shall have jurisdiction, for
2 cause shown, to restrain violations of this act and to order all
3 appropriate relief including rehiring or reinstatement of the employee
4 to his or her former position with back pay.

5 (3) Within ninety days of the receipt of the complaint filed under
6 this section, the director shall notify the complainant of the
7 determination under subsection (2) of this section.

8 NEW SECTION. **Sec. 8.** COLLECTIVE BARGAINING AGREEMENTS. (1)
9 Nothing in this act shall be construed to diminish an employer's
10 obligation to comply with any collective bargaining agreement which
11 provides greater rights to employees than the rights provided under
12 this act.

13 (2) If employees are covered by an unexpired collective bargaining
14 agreement containing terms that conflict with this act, and the
15 agreement expires on or after the effective date of this act, this act
16 shall apply to these employees on the first day following expiration of
17 the collective bargaining agreement.

18 NEW SECTION. **Sec. 9.** RULE MAKING. The director is authorized to
19 adopt rules in accordance with chapter 34.05 RCW that are necessary to
20 implement this act.

21 NEW SECTION. **Sec. 10.** Captions used in this act are not any part
22 of the law.

23 NEW SECTION. **Sec. 11.** If any provision of this act or its
24 application to any person or circumstance is held invalid, the
25 remainder of the act or the application of the provision to other
26 persons or circumstances is not affected.

27 NEW SECTION. **Sec. 12.** Sections 2 through 9 of this act are each
28 added to chapter 49.46 RCW.

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