

---

SENATE BILL 6120

---

State of Washington

56th Legislature

2000 Regular Session

By Senators Fairley, Prentice, Costa, Brown, Kohl-Welles, Jacobsen, Patterson, Gardner, Kline and Spanel

Read first time 01/10/2000. Referred to Committee on Labor & Workforce Development.

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

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

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

12 NEW SECTION. **Sec. 2.** (1) Except as otherwise provided in this  
13 section, no employer may require an employee to work: (a) More than  
14 eight hours in any work day; or (b) more than forty hours in any work  
15 week. An employee is not prohibited from voluntarily agreeing to work  
16 more than eight hours in any work day or more than forty hours in any  
17 work week, subject to the requirements of RCW 49.46.130.

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, subject to the requirements of RCW 49.46.130.

6 (3)(a) Notwithstanding subsection (1) of this section, an employee  
7 may be required to work part of the next succeeding work shift  
8 following the work shift completed by the employee if:

9 (i) The work is required because of an unanticipated event,  
10 including, but not limited to, employee illness or emergency repair of  
11 production equipment, but not including a need to increase production  
12 to meet an increase in market demand, and the unanticipated event has  
13 or may halt a continuous production operation;

14 (ii)(A) In good faith, the employer has exhausted reasonable  
15 attempts to obtain voluntary work during the succeeding shift; or

16 (B) The employee has critical skills and expertise that are  
17 required for the work; and

18 (iii) As requested by the employee, the employer has assisted the  
19 employee to acquire safe transportation to his or her residence  
20 following the succeeding shift, and has assisted the employee to  
21 address child care or other family obligations successfully. At the  
22 time of requiring the employee to work part of the next succeeding  
23 shift, the employer shall inform the employee of the employer's  
24 obligation under this subsection.

25 (b) This subsection may not permit an employer to require any  
26 employee to work more than twelve consecutive hours, or to work during  
27 more than two consecutive work shifts, or to require, in any calendar  
28 month, more than sixteen hours beyond the hours of work that may be  
29 required under subsection (1) of this section.

30 (c) For the purposes of this subsection:

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

33 (A) Primary metal processing, in an industry assigned the major group  
34 standard industrial classification code "33" by the employment security  
35 department; or (B) paper and allied products, in an industry assigned  
36 the major group standard industrial classification code "26" by the  
37 employment security department.

38 (ii) "Standard industrial classification code" means the code  
39 identified in RCW 50.29.025(6)(c).

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

12 (b)(i) The department shall adopt rules providing for the election  
13 procedures and documentation required to apply for a variance under  
14 this subsection. The rules shall include provisions that require  
15 employee approval of the variance no less than annually, and that make  
16 supervisors ineligible to vote.

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

25 (c) Nothing in this subsection limits the application of RCW  
26 49.46.130 to the employees covered by a variance under this subsection.

27 (5) This section does not apply to:

28 (a) An individual exempt under: RCW 49.46.010(5) (a) through (n),  
29 except that employees of the state legislature are not exempt unless  
30 employed in a bona fide executive, administrative, or professional  
31 capacity; or RCW 49.46.130(2) (a) through (e) and (g) through (i);

32 (b) Emergency work necessary for the public health and safety,  
33 otherwise prohibited by subsection (1) of this section, performed by an  
34 employee of a public or private electric, gas, fuel oil, sewer, or  
35 water utility company, if the utility has exhausted reasonable efforts  
36 to have the work performed voluntarily by other employees;

37 (c)(i) Work performed:

38 (A) In an industry processing perishable agricultural or  
39 horticultural commodities, or perishable freshwater or saltwater fish

1 or shellfish or their products when the occurrence of seasonal factors  
2 that are customary to the industry, as determined by department rule,  
3 could result in loss or deterioration of the product because of failure  
4 to complete the work in a timely manner; or

5 (B) For an employer when at least seventy-five percent of the  
6 employer's business is supplying essential goods for the production and  
7 distribution of perishable agricultural or horticultural commodities,  
8 or perishable freshwater or saltwater fish or shellfish or their  
9 products to an industry under (c)(i)(A) of this subsection, but only  
10 during the seasonal time periods applicable to the industry under  
11 (c)(i)(A) of this subsection. An employer who does not meet the  
12 requirements of (c)(i)(B) of this subsection based on the total  
13 production of the employer's business may apply with the department for  
14 an exemption for a particular workplace when the production at that  
15 workplace meets the requirements of (c)(i)(B) of this subsection.

16 (ii) This subsection may not permit an employer to require any  
17 employee to work more than twelve consecutive hours, or to require any  
18 employee to work, in any calendar month, more than thirty-six hours  
19 beyond the hours of work that may be required under subsection (1) of  
20 this section;

21 (d) An individual employed in fire protection or law enforcement  
22 activities; or

23 (e) Work performed in emergency situations that endanger public  
24 health and safety, including, but not limited to, fires, natural  
25 disasters, civil disorders, utility interruptions, emergency medical  
26 services regulated under chapter 18.73 RCW, services required by the  
27 armed forces of the United States, including work performed under a  
28 contract with the United States department of defense when the work is  
29 necessary because of the declaration of a national emergency, or other  
30 situations determined by the department to be emergencies endangering  
31 public health and safety.

32 No exemption under this section may be deemed to provide an  
33 exemption under RCW 49.46.130.

34 NEW SECTION. **Sec. 3.** (1) No employer may discharge or in any  
35 manner discriminate against an employee because the employee exercises  
36 any of the rights provided in section 2 of this act, including the  
37 right to vote under section 2(4) of this act.

1 (2) Any employee who believes that he or she has been discharged or  
2 otherwise discriminated against in violation of this section may,  
3 within one year after such violation occurs, file a complaint with the  
4 director alleging such discrimination. Upon receipt of a complaint,  
5 the director shall cause an investigation to be made as the director  
6 deems appropriate. If, after investigation, the director determines  
7 that the provisions of this section have been violated, the director  
8 may bring an action in superior court of the county in which the  
9 violation is alleged to have occurred against the person or persons  
10 alleged to have violated the provisions of this section. If the  
11 director declines to investigate a complaint of discrimination under  
12 the provisions of this section, or declines to institute legal action  
13 following an investigation, the employee may institute the action on  
14 his or her own behalf after receiving notice of the director's decision  
15 to not investigate or not initiate legal action on the case. In any  
16 action under this section, the superior court shall have jurisdiction,  
17 for cause shown, to restrain violations of subsection (1) of this  
18 section and to order all appropriate relief including rehiring or  
19 reinstatement of the employee to his or her former position with back  
20 pay.

21 (3) Within ninety days of the receipt of the complaint filed under  
22 this section, the director shall notify the complainant of the  
23 determination under subsection (2) of this section.

24 NEW SECTION. **Sec. 4.** If employees are covered by an unexpired  
25 collective bargaining agreement containing terms that conflict with  
26 section 2 of this act, and the agreement expires on or after the  
27 effective date of this act, section 2 of this act shall apply to these  
28 employees on the first day following expiration of the collective  
29 bargaining agreement.

30 NEW SECTION. **Sec. 5.** If any provision of this act or its  
31 application to any person or circumstance is held invalid, the  
32 remainder of the act or the application of the provision to other  
33 persons or circumstances is not affected.

1        NEW SECTION.    **Sec. 6.**    Sections 2 through 4 of this act are each  
2    added to chapter 49.46 RCW.

--- **END** ---