
Commerce & Labor Committee

HB 2717

Brief Description: Aligning state law with federal law relating to overtime compensation for agriculture, forestry, and fisheries employees.

Sponsors: Representatives Chandler, Grant, Blake, Condotta, Newhouse and Armstrong.

Brief Summary of Bill

- Adds several exemptions to overtime compensation under the Federal Fair Labor Standards Act to the state's Minimum Wage Act.
- Requires overtime wages for certain agricultural work unless the employee is employed by the owner/operator.

Hearing Date: 1/24/08

Staff: Alison Hellberg (786-7152).

Background:

The Federal Fair Labor Standards Act (FLSA) and the state Minimum Wage Act (MWA) establish wage and hour standards. These standards are similar, but not identical. In general, under both federal and state law, employees who work more than 40 hours in a seven day work week must be paid at least 1.5 times the regular rate of pay. Both the FLSA and the MWA include numerous exemptions to this general standard.

Fair Labor Standards Act

One major exemption to the overtime provisions of the FLSA is for employees employed in agriculture. This exemption includes cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, fur-bearing animals, or poultry, and any practices performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The FLSA also includes specific exemptions for employees engaged in certain activities related to agricultural employment. These include:

- transporting, or preparing for transportation, fruits and vegetables in their raw or natural state from the farm to the place of first marketing or processing;
- transporting, or preparing for transportation, individuals employed in the harvesting of fruits and vegetables between the farm and any point within the state;
- working in connection with livestock auction operations as an adjunct to the raising of livestock if the individual is primarily employed during the workweek by the owner of the farm who raises the livestock and is paid at least minimum wage; and
- operating or maintaining ditches, canals, reservoirs, or waterways, which are used for supply and storing of water, at least 90 percent of which was ultimately delivered for agricultural purposes during the preceding calendar year.

For limited periods of time each year, employees engaged in cotton ginning or in the processing of sugar beets, sugar beet molasses, and sugar cane are also exempt. In addition, the FLSA contains exemptions from overtime for certain fisheries and forestry employees. The Federal Department of Labor has promulgated detailed regulations interpreting and explaining how these and other provisions of the FLSA will be enforced.

Minimum Wage Act

The MWA also contains exceptions to overtime compensation for employment related to agriculture, including individuals employed on a farm in connection with the cultivation of the soil, with the raising or harvesting of any agricultural commodity, including raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife, or in the employ of the owner or operator of the farm in connection with the operation, management, conservation, improvement, or maintenance of farms tools and equipment.

Individuals employed in delivering to storage, or to market or to a carrier for transportation to market, any agricultural or horticultural commodity are also exempt. The Department of Labor and Industries issued a policy statement interpreting this provision as applying only to individuals who work for an employer who actually produces the products. In August 2006, however, the Washington Supreme Court, in *Cerillo v. Esparza*, held that the statute was not ambiguous and that truckers hauling agricultural commodities are exempt from the overtime requirements.

Summary of Bill:

Several exemptions to overtime compensation related to individuals employed in agriculture under the FLSA are added to the MWA:

- transporting or preparing for transportation fruits and vegetables in their raw or natural state from the farm to the place of first marketing or processing;
- transporting or preparing for transportation individuals employed in the harvesting of fruits and vegetables between the farm and any point within the state;
- working in connection with livestock auction operations as an adjunct to the raising of livestock if: (a) the individual is primarily employed during the workweek by the owner of the farm who raises the livestock; and (b) is paid at least minimum wage; and
- working on a farm in connection with dairying.

Exemptions from the FLSA related to fisheries are also added for individuals employed in:

- catching, taking, propagating, harvesting, or farming of any kind of aquatic forms of animal and vegetable life; and
- the first processing, canning, or packing of marine products at sea in conjunction with such fishing operations.

The exemption under the FLSA for certain employees of forestry and lumbering operations with less than nine employees is added to the MWA. Employees of these operations are exempt when employed in:

- planting or tending trees;
- surveying;
- felling timber; or
- preparing or transporting forestry products to the place of processing or transportation.

The MWA overtime exemptions for individuals employed in the following activities is limited to individuals employed by the owner or operator with respect to agricultural or horticultural commodities produced by the owner or operator:

- packing, packaging, grading, storing or delivery to storage, or to market or to a carrier for transportation to market; and
- commercial canning, freezing or other processing.

Rules Authority: The bill does not address the rule-making powers of an agency.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.