
SUBSTITUTE HOUSE BILL 1853

State of Washington 63rd Legislature 2013 Regular Session

By House Labor & Workforce Development (originally sponsored by Representatives Maxwell, Hayes, Van De Wege, Kretz, Springer, Sells, Seaquist, Morrell, Ryu, Tharinger, and Freeman)

READ FIRST TIME 02/21/13.

1 AN ACT Relating to clarifying that real estate brokers licensed
2 under chapter 18.85 RCW are independent contractors; and amending RCW
3 49.46.130.

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

5 **Sec. 1.** RCW 49.46.130 and 2010 c 8 s 12045 are each amended to
6 read as follows:

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

13 (2) This section does not apply to:

14 (a) Any person exempted pursuant to RCW 49.46.010(~~(+5)~~) (3). The
15 payment of compensation or provision of compensatory time off in
16 addition to a salary shall not be a factor in determining whether a
17 person is exempted under RCW 49.46.010(~~(+5)~~) (3)(c);

18 (b) Employees who request compensating time off in lieu of overtime
19 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. However, the
35 provisions of the federal law regarding overtime payment based on a
36 work week other than forty hours shall nevertheless apply to employees
37 covered by this section without regard to the existence of actual
38 federal jurisdiction over the industrial activity of the particular

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

12 (j) Any individual licensed under chapter 18.85 RCW unless the
13 individual is providing real estate brokerage services under a written
14 contract with a real estate firm which provides that the individual is
15 an employee. For purposes of this subsection (2)(j), "real estate
16 brokerage services" and "real estate firm" mean the same as defined in
17 RCW 18.85.011.

18 (3) No employer shall be deemed to have violated subsection (1) of
19 this section by employing any employee of a retail or service
20 establishment for a work week in excess of the applicable work week
21 specified in subsection (1) of this section if:

22 (a) The regular rate of pay of the employee is in excess of one and
23 one-half times the minimum hourly rate required under RCW 49.46.020;
24 and

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

28 In determining the proportion of compensation representing
29 commissions, all earnings resulting from the application of a bona fide
30 commission rate is to be deemed commissions on goods or services
31 without regard to whether the computed commissions exceed the draw or
32 guarantee.

33 (4) No employer of commissioned salespeople primarily engaged in
34 the business of selling automobiles, trucks, recreational vessels,
35 recreational vessel trailers, recreational vehicle trailers,
36 recreational campers, manufactured housing, or farm implements to
37 ultimate purchasers shall violate subsection (1) of this section with

1 respect to such commissioned salespeople if the commissioned
2 salespeople are paid the greater of:

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

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

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

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