
SENATE BILL 6548

State of Washington **66th Legislature** **2020 Regular Session**

By Senators Braun, Becker, King, Schoesler, Wagoner, and Warnick

Read first time 01/22/20. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to allowing employee choice and flexibility in
2 the executive, administrative, and professional exception to the
3 minimum wage act; amending RCW 49.46.010; adding a new section to
4 chapter 49.46 RCW; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that many employees
7 want flexibility in when, where, or how they work to meet their
8 individual and families' needs. Technological advancements such as
9 mobile phones and laptop computers with email and high speed internet
10 have also led many employers to allow salaried, overtime exempt
11 employees to choose when, where, or how they work. However, the
12 Washington state department of labor and industries recently adopted
13 by rule new salary thresholds for executive, administrative, and
14 professional employees to be exempt from overtime which will result
15 in many employers reclassifying salaried employees to hourly
16 employees and these employees losing the ability to work when, where,
17 or how they want in order for employers to be in compliance with
18 state law. The legislature therefore intends to provide employees
19 meeting the overtime exempt duties test and earning a base salary of
20 at least one and one-half times the minimum hourly wage under RCW
21 49.46.020 for a forty-hour week to voluntarily choose to be overtime

1 exempt in order to provide them with the work flexibility that being
2 an overtime exempt, salaried employee provides.

3 **Sec. 2.** RCW 49.46.010 and 2015 c 299 s 3 are each amended to
4 read as follows:

5 As used in this chapter:

6 (1) "Director" means the director of labor and industries;

7 (2) "Employ" includes to permit to work;

8 (3) "Employee" includes any individual employed by an employer
9 but shall not include:

10 (a) Any individual (i) employed as a hand harvest laborer and
11 paid on a piece rate basis in an operation which has been, and is
12 generally and customarily recognized as having been, paid on a piece
13 rate basis in the region of employment; (ii) who commutes daily from
14 his or her permanent residence to the farm on which he or she is
15 employed; and (iii) who has been employed in agriculture less than
16 thirteen weeks during the preceding calendar year;

17 (b) Any individual employed in casual labor in or about a private
18 home, unless performed in the course of the employer's trade,
19 business, or profession;

20 (c) Any individual employed in a bona fide executive,
21 administrative, or professional capacity or in the capacity of
22 outside salesperson as those terms are defined and delimited by rules
23 of the director, subject to section 3 of this act. However, those
24 terms shall be defined and delimited by the human resources director
25 pursuant to chapter 41.06 RCW for employees employed under the
26 director of personnel's jurisdiction;

27 (d) Any individual engaged in the activities of an educational,
28 charitable, religious, state or local governmental body or agency, or
29 nonprofit organization where the employer-employee relationship does
30 not in fact exist or where the services are rendered to such
31 organizations gratuitously. If the individual receives reimbursement
32 in lieu of compensation for normally incurred out-of-pocket expenses
33 or receives a nominal amount of compensation per unit of voluntary
34 service rendered, an employer-employee relationship is deemed not to
35 exist for the purpose of this section or for purposes of membership
36 or qualification in any state, local government, or publicly
37 supported retirement system other than that provided under chapter
38 41.24 RCW;

1 (e) Any individual employed full time by any state or local
2 governmental body or agency who provides voluntary services but only
3 with regard to the provision of the voluntary services. The voluntary
4 services and any compensation therefor shall not affect or add to
5 qualification, entitlement, or benefit rights under any state, local
6 government, or publicly supported retirement system other than that
7 provided under chapter 41.24 RCW;

8 (f) Any newspaper vendor, carrier, or delivery person selling or
9 distributing newspapers on the street, to offices, to businesses, or
10 from house to house and any freelance news correspondent or
11 "stringer" who, using his or her own equipment, chooses to submit
12 material for publication for free or a fee when such material is
13 published;

14 (g) Any carrier subject to regulation by Part 1 of the Interstate
15 Commerce Act;

16 (h) Any individual engaged in forest protection and fire
17 prevention activities;

18 (i) Any individual employed by any charitable institution charged
19 with child care responsibilities engaged primarily in the development
20 of character or citizenship or promoting health or physical fitness
21 or providing or sponsoring recreational opportunities or facilities
22 for young people or members of the armed forces of the United States;

23 (j) Any individual whose duties require that he or she reside or
24 sleep at the place of his or her employment or who otherwise spends a
25 substantial portion of his or her work time subject to call, and not
26 engaged in the performance of active duties;

27 (k) Any resident, inmate, or patient of a state, county, or
28 municipal correctional, detention, treatment or rehabilitative
29 institution;

30 (l) Any individual who holds a public elective or appointive
31 office of the state, any county, city, town, municipal corporation or
32 quasi municipal corporation, political subdivision, or any
33 instrumentality thereof, or any employee of the state legislature;

34 (m) All vessel operating crews of the Washington state ferries
35 operated by the department of transportation;

36 (n) Any individual employed as a seaman on a vessel other than an
37 American vessel;

38 (o) An individual who is at least sixteen years old but under
39 twenty-one years old, in his or her capacity as a player for a junior
40 ice hockey team that is a member of a regional, national, or

1 international league and that contracts with an arena owned,
2 operated, or managed by a public facilities district created under
3 chapter 36.100 RCW;

4 (4) "Employer" includes any individual, partnership, association,
5 corporation, business trust, or any person or group of persons acting
6 directly or indirectly in the interest of an employer in relation to
7 an employee;

8 (5) "Occupation" means any occupation, service, trade, business,
9 industry, or branch or group of industries or employment or class of
10 employment in which employees are gainfully employed;

11 (6) "Retail or service establishment" means an establishment
12 seventy-five percent of whose annual dollar volume of sales of goods
13 or services, or both, is not for resale and is recognized as retail
14 sales or services in the particular industry;

15 (7) "Wage" means compensation due to an employee by reason of
16 employment, payable in legal tender of the United States or checks on
17 banks convertible into cash on demand at full face value, subject to
18 such deductions, charges, or allowances as may be permitted by rules
19 of the director.

20 NEW SECTION. **Sec. 3.** A new section is added to chapter 49.46
21 RCW to read as follows:

22 (1) The department of labor and industries must initiate a rule-
23 making process to allow employees that: (a) Earn a base salary of at
24 least one and one-half times the minimum hourly wage under RCW
25 49.46.020 for a forty-hour week; and (b) would otherwise meet duties-
26 related criteria for exemption under RCW 49.46.010(3)(c), to
27 voluntarily choose to be classified as an employee that is exempt
28 from the overtime requirements established under RCW 49.46.130.

29 (2) In adopting such rules, the department must consider how to
30 protect an employee from undue pressure from an employer to make a
31 particular choice, how to protect an employee from retaliation based
32 on the choice they made, and how to incorporate variable compensation
33 into determining eligibility under the salary threshold for employees
34 to choose such classification.

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