

# SENATE BILL REPORT

## SB 5172

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As of January 26, 2021

**Title:** An act relating to the retroactivity of overtime claims in exceptional cases.

**Brief Description:** Concerning the retroactivity of overtime claims in exceptional cases.

**Sponsors:** Senators King, Brown, Fortunato, Honeyford, Muzzall, Schoesler, Short and Wagoner.

**Brief History:**

**Committee Activity:** Labor, Commerce & Tribal Affairs: 1/28/21.

### Brief Summary of Bill

- Prohibits courts from awarding retroactive overtime pay when the award creates a substantially inequitable result.
- Outlines factors that create a substantially inequitable result.
- Contains an emergency clause.

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### SENATE COMMITTEE ON LABOR, COMMERCE & TRIBAL AFFAIRS

**Staff:** Matt Shepard-Koningsor (786-7627)

**Background:** Minimum Wage & Overtime. As of January 1, 2021, the minimum wage in the state of Washington is \$13.69 per hour. The Department of Labor and Industries (L&I) calculates the state minimum wage. Washington employers must pay most employees at least the minimum wage for every hour worked. Most employees who work more than 40 hours in a seven-day workweek must be paid overtime. Overtime pay must be at least 1.5 times the employee's regular hourly rate and employees may not waive their right to overtime pay. Employers must pay overtime to eligible workers regardless of employer size. Collective bargaining agreements and employers may provide more generous overtime pay than state law requires. L&I handles worker rights complaints under the

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Wage Payment Act. Workers may also choose to file a civil action for violations under the Minimum Wage and Wage Payment Acts.

Overtime Exemptions. Although most employees are entitled to overtime pay after working 40 hours in a seven-day workweek, there are specific categories of employees who are not required to receive overtime, such as executive, administrative, and professional employees in some circumstances; casual laborers; certain seasonal employees; workers performing forest protection and fire prevention activities; and most agricultural workers.

Overtime does not apply to individuals working on a farm involved in:

- soil cultivation;
- raising crops;
- handling livestock;
- farm operations;
- packing, packaging, grading, storing, or delivering an agricultural or horticultural commodity;
- commercial canning, freezing, or processing an agricultural or horticultural commodity and related delivery; and
- cultivating, raising, harvesting, and processing oysters and related delivery.

Recent Washington Supreme Court Case. On November 5, 2020, the Washington Supreme Court ruled in *Jose Martinez-Cuevas v. DeRuyter Bros. Dairy, Inc.*, that the current law exempting agricultural workers from overtime pay, as applied to dairy workers, is unconstitutional under the Washington State Constitution (constitution). Specifically, the court held that the stated purpose of the Minimum Wage Act is to protect the health and safety of Washington workers, as required by the constitution, and under it, the agricultural exemption to overtime pay granted an impermissible privilege or immunity to dairy employers not to pay overtime to their workers. The decision did not address whether dairy employers must pay retroactive overtime for work in excess of 40 hours prior to the date of the decision because neither party raised the issue in its statement of grounds for review, therefore, the issue was not properly before the court.

**Summary of Bill:** A court is prohibited from awarding retroactive pay in overtime wage claims when doing so would create a substantially inequitable result.

An award of retroactive pay creates a substantially inequitable result in causes of action for overtime pay when:

- a court announces a new rule or interpretation of law; and
- the previous rule or interpretation of law had been expressed in a statute, ordinance, rule, or court decision; or expressed in a reasonable interpretation of such statute, ordinance, rule, or court decision.

The inequitable result test applies retroactively and prospectively to all overtime wage claims regardless of when the cause of action arose.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.