

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1974



ENROLLED

HOUSE BILL No. 725

(By Mr. Kopp and Mr. Kopelman)



PASSED March 9, 1974

In Effect July 1, 1974 Passage



725

LEGISLATIVE OFFICE
ELDON F. HEISKELL III
SECRETARY OF STATE

THIS DATE 3-20-74

ENROLLED

H. B. 725

(By MR. KOPP and MR. KOPELMAN)

[Passed March 9, 1974; in effect July 1, 1974.]

AN ACT to amend and reenact sections one, two, three and four, article five-c, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reducing number of employees in definition of employer; increasing minimum wage and reducing maximum hours for overtime compensation standards for employees allowing and fixing certain credits.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three and four, article five-c, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 5C. MINIMUM WAGE AND MAXIMUM HOURS STANDARDS FOR EMPLOYEES.

§21-5C-1. Definitions.

1 As used in this article:

2 (a) "Commissioner" means the commissioner of labor or
3 his duly authorized representatives.

4 (b) "Wage and hour director" means the wage and hour
5 director appointed by the commissioner of labor as chief of
6 the wage and hour division.

7 (c) "Wage" means compensation due an employee by rea-
8 son of his employment.

9 (d) "Employ" means to hire or permit to work.

10 (e) "Employer" includes the state of West Virginia, its
11 agencies, departments and all its political subdivisions, any
12 individual, partnership, association, public or private corpora-
13 tion, or any person or group of persons acting directly
14 or indirectly in the interest of any employer in relation to an
15 employee; and who employs during any calendar week
16 six or more employees as herein defined in any one separate,
17 distinct and permanent location or business establishment:
18 *Provided*, That the term "employer" shall not include any
19 individual, partnership, association, corporation, person or
20 group of persons or similar unit if eighty percent of the persons
21 employed by him are subject to any federal act relating to
22 minimum wage, maximum hours and overtime compensation.

23 (f) "Employee" includes any individual employed by an
24 employer but shall not include: (1) Any individual employed
25 by the United States; (2) any individual engaged in the
26 activities of an educational, charitable, religious, fraternal
27 or nonprofit organization where the employer-employee rela-
28 tionship does not in fact exist, or where the services rendered
29 to such organizations are on a voluntary basis; (3) newsboys,
30 shoeshine boys, golf caddies, pin boys and pin chasers in
31 bowling lanes; (4) traveling salesmen and outside salesmen;
32 (5) services performed by an individual in the employ of his
33 parent, son, daughter or spouse; (6) any individual employed
34 in a bona fide professional, executive or administrative capa-
35 city; (7) any person whose employment is for the purpose of
36 on-the-job training; (8) any person having a physical or
37 mental handicap so severe as to prevent his employment or
38 employment training in any training or employment facility
39 other than a nonprofit sheltered workshop; (9) any in-
40 dividual employed in a boys or girls summer camp; (10) any
41 person sixty-two years of age or over who receives old-age or
42 survivors benefits from the social security administration;
43 (11) any individual employed in agriculture as the word
44 agriculture is defined in the Fair Labor Standards Act of
45 1938, as amended; (12) any individual employed as a fire-
46 fighter by the state or agency thereof; (13) ushers in theaters;
47 (14) any individual employed on a part-time basis who is a
48 student in any recognized school or college; (15) any in-

49 individual employed by a local or interurban motorbus carrier;
50 (16) so far as the maximum hours and overtime compensation
51 provisions of this article are concerned, any salesman, parts-
52 man or mechanic primarily engaged in selling or servicing auto-
53 mobiles, trailers, trucks, farm implements, or aircraft if
54 employed by a nonmanufacturing establishment primarily en-
55 gaged in the business of selling such vehicles to ultimate
56 purchasers; (17) any employee with respect to whom the
57 United States Department of Transportation has statutory
58 authority to establish qualifications and maximum hours of
59 service.

60 (g) "Workweek" means a regularly recurring period of
61 one hundred sixty-eight hours in the form of seven consecutive
62 twenty-four-hour periods, need not coincide with the calendar
63 week, and may begin any day of the calendar week and any
64 hour of the day.

65 (h) "Hours worked", in determining for the purposes of
66 sections two and three of this article, the hours for which
67 an employee is employed, there shall be excluded any time
68 spent in changing clothes or washing at the beginning or end
69 of each workday, time spent in walking, riding or traveling
70 to and from the actual place of performance of the principal
71 activity or activities which such employee is employed to
72 perform and activities which are preliminary to or postliminary
73 to said principal activity or activities, subject to such exceptions
74 as the commissioner may by rules and regulations define.

§21-5C-2. Minimum wages.

1 On and after the first day of July, one thousand nine hun-
2 dred seventy-four and until the thirtieth day of June, one
3 thousand nine hundred seventy-five, every employer shall pay
4 to each of his employees wages at a rate not less than one dol-
5 lar and eighty cents per hour; on and after the first day of
6 July, one thousand nine hundred seventy-five, every employer
7 shall pay to each of his employees wages at a rate not less
8 than two dollars per hour.

§21-5C-3. Maximum hours; overtime compensation.

1 (a) On and after the first day of July, one thousand nine
2 hundred seventy-four, and until the thirtieth day of June, one

3 thousand nine hundred seventy-five, no employer shall employ
4 any of his employees for a workweek longer than forty-six
5 hours, unless such employee receives compensation for his
6 employment in excess of the hours above specified at a rate of
7 not less than one and one-half times the regular rate at which he
8 is employed; on and after the first day of July, one thousand
9 nine hundred seventy-five, no employer shall employ any of
10 his employees for a workweek longer than forty-four hours,
11 unless such employee receives compensation for his employment
12 in excess of the hours above specified at a rate not less than one
13 and one-half times the regular rate at which he is employed.

14 (b) As used in this section the "regular rate" at which an
15 employee is employed shall be deemed to include all remuneration
16 for employment paid to, or on behalf of, the employee,
17 but shall not be deemed to include:

18 (1) Sums paid as gifts; payment in the nature of gifts made
19 at Christmas time or on other special occasions, as a reward
20 for service, the amounts of which are not measured by or
21 dependent on hours worked, production, or efficiency;

22 (2) Payments made for occasional periods when no work is
23 performed due to vacation, holiday, illness, failure of the employer
24 to provide sufficient work, or other similar cause; reasonable
25 payments for traveling expenses, or other expenses, incurred by an
26 employee in the furtherance of his employer's interests and properly
27 reimbursable by the employer, and other similar payments to an
28 employee which are not made as compensation for his hours of
29 employment;

30 (3) Sums paid in recognition of services performed during
31 a given period if either, (a) both the fact that payment is to
32 be made and the amount of the payment are determined at the
33 sole discretion of the employer at or near the end of the period
34 and not pursuant to any prior contract, agreement or promise
35 causing the employee to expect such payments regularly; or (b)
36 the payments are made pursuant to a bona fide profit-sharing
37 plan or trust or bona fide thrift or savings plan, meeting the
38 requirements of the commissioner set forth in appropriate
39 regulation which he shall issue, having due regard among other
40 relevant factors, to the extent to which the amounts paid to

41 the employee are determined without regard to hours of work,
42 production or efficiency; or (c) the payments are talent fees
43 (as such talent fees are defined and delimited by regulations of
44 the commissioner) paid to performers, including announcers,
45 on radio and television programs;

46 (4) Contributions irrevocably made by an employer to a
47 trustee or third person pursuant to a bona fide plan for pro-
48 viding old-age, retirement, life, accident, or health insurance or
49 similar benefits for employees;

50 (5) Extra compensation provided by a premium rate paid
51 for certain hours worked by the employee in any day or work-
52 week because such hours are hours worked in excess of eight
53 in a day or in excess of the maximum workweek applicable to
54 such employee under subsection (a) or in excess of the em-
55 ployee's normal working hours or regular working hours, as
56 the case may be;

57 (6) Extra compensation provided by a premium rate paid
58 for work by the employee on Saturdays, Sundays, holidays or
59 regular days of rest, or on the sixth or seventh day of the work-
60 week, where such premium rate is not less than one and one-
61 half times the rate established in good faith for like work per-
62 formed in nonovertime hours on other days; or

63 (7) Extra compensation provided by a premium rate paid
64 to the employee, in pursuance of an applicable employment
65 contract or collective bargaining agreement, for work outside
66 of the hours established in good faith by the contract or agree-
67 ment as the basic, normal or regular workweek where such
68 premium rate is not less than one and one-half times the rate
69 established in good faith by the contract or agreement for like
70 work performed during such workweek.

71 (c) No employer shall be deemed to have violated subsec-
72 tion (a) by employing any employee for a workweek in excess
73 of the maximum workweek applicable to such employee under
74 subsection (a) if such employee is employed pursuant to a
75 bona fide individual contract, or pursuant to an agreement
76 made as a result of collective bargaining by representatives of
77 employees, if the duties of such employee necessitate irregular
78 hours of work, and the contract or agreement (1) specifies a

79 regular rate of pay of not less than the minimum hourly rate
80 provided in section two and compensation at not less than one
81 and one-half times such rate for all hours worked in excess
82 of such maximum workweek, and (2) provides a weekly guar-
83 anty of pay for not more than sixty hours based on the rates
84 so specified.

85 (d) No employer shall be deemed to have violated subsec-
86 tion (a) by employing any employee for a workweek in excess
87 of the maximum workweek applicable to such employee under
88 such subsection if, pursuant to an agreement or understanding
89 arrived at between the employer and the employee before per-
90 formance of the work, the amount paid to the employee for
91 the number of hours worked by him in such workweek in ex-
92 cess of the maximum workweek applicable to such employee
93 under such subsection:

94 (1) In the case of an employee employed at piece rates, is
95 computed at piece rates not less than one and one-half times
96 the bona fide piece rates applicable to the same work when
97 performed during nonovertime hours; or

98 (2) In the case of an employee performing two or more
99 kinds of work for which different hourly or piece rates have
100 been established, is computed at rates not less than one and
101 one-half times such bona fide rates applicable to the same
102 work when performed during nonovertime hours; or

103 (3) Is computed at a rate not less than one and one-half
104 times the rate established by such agreement or understanding
105 as the basic rate to be used in computing overtime compensa-
106 tion thereunder: *Provided*, That the rate so established shall
107 be authorized by regulation by the commissioner as being sub-
108 stantially equivalent to the average hourly earnings of the em-
109 ployee, exclusive of overtime premiums,
110 over a representative period of time; and if (i) the employee's
111 average hourly earnings for the workweek exclusive of pay-
112 ments described in subdivisions (1) through (7) of subsection
113 (b) are not less than the minimum hourly rate required by ap-
114 plicable law, and (ii) extra overtime compensation is proper-
115 ly computed and paid on other forms of additional pay re-
116 quired to be included in computing the regular rate.

117 (e) Extra compensation paid as described in subdivisions

*Cost of
substantially
exp* → 109 *employee, exclusive of overtime premiums,
in the particular work*

118 (5) (6) and (7) of subsection (b) shall be creditable toward
119 overtime compensation payable pursuant to this section.

§21-5C-4. Credits.

1 In determining whether an employer is paying an employee
2 wages and overtime compensation as provided in sections two
3 and three of this article, there shall be provided in accordance
4 with the regulations which shall be promulgated by the com-
5 missioner a credit to the employer of twenty per cent of the
6 hourly rate of the amount paid an employee customarily re-
7 ceiving gratuities, and a reasonable credit for board and lodging
8 furnished to an employee. The commissioner shall pro-
9 mulgate regulations relating to maximum allowances to em-
10 ployers for room and board furnished to employees: *Pro-*
11 *vided*, That the employer shall be required to furnish to the
12 commissioner upon request, documentary evidence that the
13 employee is receiving at least twenty per cent of the minimum
14 wage in gratuities or is receiving room and lodging in accord-
15 ance with the rules and regulations promulgated by the com-
16 missioner.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

H. Darrel Darby
Chairman Senate Committee

Lawrence C. Chustan Jr
Chairman House Committee

Originated in the House.

Takes effect July 1, 1974.

Harold W. Carson
Clerk of the Senate

VA Blankenship
Clerk of the House of Delegates

H. P. Brotherton Jr.
President of the Senate

Lewis F. McManus
Speaker House of Delegates

The within approved this the 19th
March day of _____, 1974.

Arch A. Prange Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 3/15/74

Time 2:50 p.m.