

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-18-80

Time 3:20 p.m.

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1980



ENROLLED

HOUSE BILL No. 1473

(By Mr. Yanni.....)



Passed March 8, 1980

In Effect July 1, 1980 **Passage**



710: 1473

ENROLLED

H. B. 1473

(By MR. YANNI)

[Passed March 8, 1980; in effect July 1, 1980.]

AN ACT to amend and reenact sections one, two and three, article five-c, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the minimum wage to two dollars and seventy-five cents per hour, and decreasing from forty-two to forty the maximum allowable work hours per week without overtime compensation.

Be it enacted by the Legislature of West Virginia:

That sections one, two and three, 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 or in-
14 directly in the interest of any employer in relation to an em-
15 ployee; and who employs during any calendar week six or
16 more employees as herein defined in any one separate, distinct
17 and permanent location or business establishment: *Provided*,
18 That the term "employer" shall not include any individual,
19 partnership, association, corporation, person or group of per-
20 sons or similar unit if eighty percent of the persons employed
21 by him are subject to any federal act relating to minimum
22 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 or
27 nonprofit organization where the employer-employee relation-
28 ship does not in fact exist, or where the services rendered to
29 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 in
34 a bona fide professional, executive or administrative capacity;
35 (7) any person whose employment is for the purpose of on-
36 the-job training; (8) any person having a physical or mental
37 handicap so severe as to prevent his employment or employ-
38 ment training in any training or employment facility other
39 than a nonprofit sheltered workshop; (9) any individual em-
40 ployed in a boys or girls summer camp; (10) any person sixty-
41 two years of age or over who receives old-age or survivors
42 benefits from the social security administration; (11) any
43 individual employed in agriculture as the word agriculture is
44 defined in the Fair Labor Standards Act of 1938, as amended
45 ~~ed~~; (12) any individual employed as a fire fighter by the state
46 or agency thereof; (13) ushers in theaters; (14) any individual
47 employed on a part-time basis who is a student in any recog-

48 nized school or college; (15) any individual employed by a
49 local or interurban motorbus carrier; (16) so far as the maxi-
50 mum hours and overtime compensation provisions of this
51 article are concerned, any salesman, parts man or mechanic
52 primarily engaged in selling or servicing automobiles, trailers,
53 trucks, farm implements, or aircraft if employed by a non-
54 manufacturing establishment primarily engaged in the business
55 of selling such vehicles to ultimate purchasers; or (17) any
56 employee with respect to whom the United States department
57 of transportation has statutory authority to establish quali-
58 fications and maximum hours of service.

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

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

§21-5C-2. Minimum wages.

1 After the thirty-first day of December, one thousand nine
2 hundred eighty, every employer shall pay to each of his em-
3 ployees wages at a rate not less than two dollars and seventy-
4 five cents per hour.

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

1 (a) On and after the first day of July, one thousand
2 nine hundred eighty, no employer shall employ any of his
3 employees for a workweek longer than forty hours, unless
4 such employee receives compensation for his employment
5 in excess of the hours above specified at a rate of not

6 less than one and one-half times the regular rate at which
7 he is employed.

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

12 (1) Sums paid as gifts; payments in the nature of gifts
13 made at Christmas time or on other special occasions, as a
14 reward for service, the amounts of which are not measured by
15 or dependent on hours worked, production, or efficiency;

16 (2) Payments made for occasional periods when no work is
17 performed due to vacation, holiday, illness, failure of the
18 employer to provide sufficient work, or other similar cause;
19 reasonable payments for traveling expenses, or other ex-
20 penses, incurred by an employee in the furtherance of his
21 employer's interests and properly reimbursable by the em-
22 ployer, and other similar payments to an employee which
23 are not made as compensation for his hours of employment;

24 (3) Sums paid in recognition of services performed during
25 a given period if either, (a) both the fact that payment
26 is to be made and the amount of the payment are deter-
27 mined at the sole discretion of the employer at or near the
28 end of the period and not pursuant to any prior contract,
29 agreement or promise causing the employee to expect such
30 payments regularly; or (b) the payments are made pursuant
31 to a bona fide profit-sharing plan or trust or bona fide
32 thrift or savings plan, meeting the requirements of the com-
33 missioner set forth in appropriate regulation which he shall
34 issue, having due regard among other relevant factors, to
35 the extent to which the amounts paid to the employee are
36 determined without regard to hours of work, production or
37 efficiency; or (c) the payments are talent fees (as such talent
38 fees are defined and delimited by regulations of the com-
39 missioner) paid to performers, including announcers, on radio
40 and television programs;

41 (4) Contributions irrevocably made by an employer to a
42 trustee or third person pursuant to a bona fide plan for

43 providing old-age, retirement, life, accident, or health insurance
44 or similar benefits for employees;

45 (5) Extra compensation provided by a premium rate paid
46 for certain hours worked by the employee in any day or
47 workweek because such hours are hours worked in excess of
48 eight in a day or in excess of the maximum workweek ap-
49 plicable to such employee under subsection (a) or in excess
50 of the employee's normal working hours or regular working
51 hours, as the case may be;

52 (6) Extra compensation provided by a premium rate paid
53 for work by the employee on Saturdays, Sundays, holidays or
54 regular days of rest, or on the sixth or seventh day of the
55 workweek, where such premium rate is not less than one and
56 one-half times the rate established in good faith for like
57 work performed in nonovertime hours on other days; or

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

66 (c) No employer shall be deemed to have violated subsec-
67 tion (a) by employing any employee for a workweek in excess
68 of the maximum workweek applicable to such employee under
69 subsection (a) if such employee is employed pursuant to a
70 bona fide individual contract, or pursuant to an agreement
71 made as a result of collective bargaining by representatives
72 of employees, if the duties of such employee necessitate irre-
73 gular hours of work, and the contract or agreement (1) speci-
74 fies a regular rate of pay of not less than the minimum hourly
75 rate provided in section two and compensation at not less than
76 one and one-half times such rate for all hours worked in ex-
77 cess of such maximum workweek, and (2) provides a weekly
78 guaranty of pay for not more than sixty hours based on the
79 rates so specified.

80 (d) No employer shall be deemed to have violated sub-

81 section (a) by employing any employee for a workweek in
82 excess of the maximum workweek applicable to such employee
83 under such subsection if, pursuant to an agreement or under-
84 standing arrived at between the employer and the employee
85 before performance of the work, the amount paid to the em-
86 ployee for the number of hours worked by him in such work-
87 week in excess of the maximum workweek applicable to such
88 employee under such subsection:

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

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

98 (3) Is computed at a rate not less than one and one-half
99 times the rate established by such agreement or understand-
100 ing as the basic rate to be used in computing overtime com-
101 pensation thereunder: *Provided*, That the rate so established
102 shall be authorized by regulation by the commissioner as be-
103 ing substantially equivalent to the average hourly earnings of
104 the employee, exclusive of overtime premiums, in the particu-
105 lar work over a representative period of time; and if (i) the
106 employee's average hourly earnings for the workweek exclusive
107 of payments described in subdivisions (1) through (7) of sub-
108 section (b) are not less than the minimum hourly rate required
109 by applicable law, and (ii) extra overtime compensation is
110 properly computed and paid on other forms of additional pay
111 required to be included in computing the regular rate.

112 (e) Extra compensation paid as described in subdivisions
113 (5), (6) and (7) of subsection (b) shall be creditable toward
114 overtime compensation payable pursuant to this section.

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

James L. Davis
Chairman Senate Committee

Clarence C. Christian Jr
Chairman House Committee

Originated in the House.

Takes effect July 1, 1980.

Judd C. Mills
Clerk of the Senate

W. Blankenship
Clerk of the House of Delegates

J. O. Holston Jr
President of the Senate

Clayton M. Lee Jr
Speaker House of Delegates

The within *is approved* this the *10*
day of *March*, 1980.

John R. Ralston
Governor

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