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WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1992

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ENROLLED

HOUSE BILL No. 4190

(By Delegates DAMRON AND REED)

— ● —

Passed MARCH 7, 1992 1992

In Effect NINETY DAYS FROM Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 4190

(By DELEGATES DAMRON AND REED)

[Passed March 7, 1992; in effect ninety days from passage.]

AN ACT to amend and reenact section three, article five-c, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to compensatory time in lieu of overtime pay for employees of county or municipal governments; providing a rate of compensation time; limiting the maximum accrual of compensation time; limiting the usage of compensation time; requiring agreement prior to performance of work; and providing for monetary compensation in event of termination of employment.

Be it enacted by the Legislature of West Virginia:

That section 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-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
- 3 his employees for a workweek longer than forty hours,
- 4 unless such employee receives compensation for his

5 employment in excess of the hours above specified at a
6 rate of not less than one and one-half times the regular
7 rate at which 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,
11 the 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,
14 as a reward for service, the amounts of which are not
15 measured by or dependent on hours worked, production,
16 or efficiency;

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

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

44 (4) Contributions irrevocably made by an employer to

45 a trustee or third person pursuant to a bona fide plan
46 for providing old-age, retirement, life, accident, or
47 health insurance or similar benefits for employees;

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

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

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

71 (c) No employer shall be deemed to have violated
72 subsection (a) by employing any employee for a work-
73 week in excess of the maximum workweek applicable
74 to such employee under subsection (a) if such employee
75 is employed pursuant to a bona fide individual contract,
76 or pursuant to an agreement made as a result of
77 collective bargaining by representatives of employees, if
78 the duties of such employee necessitate irregular hours
79 of work, and the contract or agreement (1) specifies a
80 regular rate of pay of not less than the minimum hourly
81 rate provided in section two and compensation at not
82 less than one and one-half times such rate for all hours
83 worked in excess of such maximum workweek, and (2)
84 provides a weekly guaranty of pay for not more than

85 sixty hours based on the rates so specified.

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

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

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

106 (3) Is computed at a rate not less than one and one-
107 half times the rate established by such agreement or
108 understanding as the basic rate to be used in computing
109 overtime compensation thereunder: *Provided*, That the
110 rate so established shall be authorized by regulation by
111 the commissioner as being substantially equivalent to
112 the average hourly earnings of the employee, exclusive
113 of overtime premiums, in the particular work over a
114 representative period of time; and if (i) the employee's
115 average hourly earnings for the workweek exclusive of
116 payments described in subdivisions (1) through (7) of
117 subsection (b) are not less than the minimum hourly rate
118 required by applicable law, and (ii) extra overtime
119 compensation is properly computed and paid on other
120 forms of additional pay required to be included in
121 computing the regular rate.

122 (e) Extra compensation paid as described in subdivi-
123 sions (5), (6) and (7) of subsection (b) shall be creditable
124 toward overtime compensation payable pursuant to this

125 section.

126 (f) (1) Employees of county and municipal govern-
127 ments may receive, in accordance with this subsection
128 and in lieu of overtime compensation, compensatory
129 time off at a rate not less than one and one-half hours
130 for each hour of employment for which overtime is
131 required pursuant to this section.

132 (2) County and municipal governments may provide
133 compensatory time under subdivision (1) of this subsec-
134 tion, only pursuant to a written agreement arrived at
135 between the employer and employee before the perfor-
136 mance of the work, and recorded in the employer's
137 record of hours worked, and if the employee has not
138 accrued compensatory time in excess of the limit
139 prescribed in subdivision (3) of this subsection. Any
140 written agreement may be modified at the request of
141 either the employer or the employee, but under no
142 circumstances shall changes in the agreement deny an
143 employee compensatory time heretofore acquired.

144 (3) An employee may accrue up to four hundred eighty
145 hours of compensatory time if the employee's work is a
146 public safety activity, an emergency response activity or
147 a seasonal activity. An employee engaged in other work
148 for a county or municipal government may accrue up
149 to two hundred forty hours of compensatory time. Any
150 such employee who has accrued four hundred eight or
151 two hundred forty hours of compensatory time, as the
152 case may be, shall for additional overtime hours of work,
153 be paid overtime compensation. If compensation is paid
154 to an employee for accrued compensatory time off, such
155 compensation shall be paid at the regular rate earned
156 by the employee at the time the employee receives such
157 payment.

158 (4) An employee who has accrued compensatory time
159 off authorized to be provided under subdivision (1) of
160 this subsection shall, upon termination of employment,
161 be paid for the unused compensatory time at a rate of
162 compensation not less than:

163 (A) The average regular rate received by such
164 employee during the last three years of the employee's

165 employment; or

166 (B) The final regular rate received by such employee,
167 whichever is higher.

168 (5) An employee of a county or municipal government:

169 (A) Who has accrued compensatory time off autho-
170 rized to be provided under subdivision (1) of this
171 subsection; and

172 (B) Who has requested the use of such compensatory
173 time, shall be permitted by the employee's employer to
174 use such time within a reasonable time after making the
175 request if the use of the compensatory time does not
176 unduly disrupt the operation of the public agency.
177 Compensatory time must be used within one year from
178 the time it was acquired.

179 (6) For purposes of this subsection the terms "compen-
180 satory time" and "compensatory time off" mean hours
181 during which an employee is not working, which are not
182 counted as hours worked during the applicable work-
183 week or other work period for purposes of overtime
184 compensation, and for which the employee is compen-
185 sated at the employee's regular rate.

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

Homer Beck

Chairman Senate Committee

Ernest Moore

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Russell E. Adams

Clerk of the Senate

Donald R. Kapp

Clerk of the House of Delegates

Paul Brubaker

President of the Senate

Bob Zell

Speaker of the House of Delegates

The within *is approved* this the *14*
day of *April*, 1992.

Yaston Caperton

Governor

PRESENTED TO THE

GOVERNOR

Date 3/27/92

Time 3:45 pm