

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

A Bill

HOUSE BILL 1699

5 By: Representative Adcock
6 By: Senator Crumbly
7
8

For An Act To Be Entitled

9
10 AN ACT TO AMEND THE MINIMUM WAGE AND OVERTIME LAW
11 TO PARALLEL CERTAIN PROVISIONS OF FEDERAL MINIMUM
12 WAGE AND OVERTIME LAW; AND FOR OTHER PURPOSES.
13

Subtitle

14
15 TO AMEND THE MINIMUM WAGE AND OVERTIME
16 LAW TO PARALLEL CERTAIN PROVISIONS OF
17 FEDERAL MINIMUM WAGE AND OVERTIME LAW.
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19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. Arkansas Code § 11-4-203(3), concerning the definition of
23 "employee", is amended to read as follows:

24 (3) "Employee" means any individual employed by an employer but
25 shall not include:

26 (A) Any individual employed in a bona fide executive,
27 administrative, or professional capacity or as an outside commission-paid
28 salesperson who customarily performs his or her services away from his or her
29 employer's premises taking orders for goods or services;

30 (B) Students performing services for any school, college,
31 or university in which they are enrolled and are regularly attending classes;

32 (C) Any individual employed by the United States;

33 (D) Any individual engaged in the activities of any
34 educational, charitable, religious, or nonprofit organization in which the
35 employer-employee relationship does not in fact exist or in which the
36 services are rendered to the organizations gratuitously;



1 (E) Any bona fide independent contractor;

2 (F) Any individual employed by an agricultural employer
3 who did not use more than five hundred (500) man-days of agricultural labor
4 in any calendar quarter of the preceding calendar year;

5 (G) The parent, spouse, child, or other member of an
6 agricultural employer's immediate family;

7 (H) An individual who:

8 (i) Is employed as a hand-harvest laborer and is
9 paid on a piece-rate basis in an operation that has been, and is customarily
10 and generally recognized as having been, paid on a piece-rate basis in the
11 region of employment;

12 (ii) Commutes daily from his or her permanent
13 residence to the farm on which he or she is so employed; and

14 (iii) Has been employed in agriculture less than
15 thirteen (13) weeks during the preceding calendar year;

16 (I) A migrant who:

17 (i) Is sixteen (16) years of age or under and is
18 employed as a hand-harvest laborer;

19 (ii) Is paid on a piece-rate basis in an operation
20 that has been, and is customarily and generally recognized as having been,
21 paid on a piece-rate basis in the region of employment;

22 (iii) Is employed on the same farm as his or her
23 parents; and

24 (iv) Is paid the same piece-rate as employees over
25 sixteen (16) years of age are paid on the same farm;

26 (J) Any employee principally engaged in the range
27 production of livestock;

28 (K) Any employee employed in planting or tending trees,
29 cruising, surveying, or felling timber or in preparing or transporting logs
30 or other forestry products to the mill, processing plants, or railroad or
31 other transportation terminal if the number of employees employed by his or
32 her employer in the forestry or lumbering operations does not exceed eight
33 (8);

34 (L) An employee employed by a nonprofit recreational or
35 educational camp that does not operate for more than seven (7) months in any
36 calendar year; ~~or~~

1 (M) A nonprofit child welfare agency employee who serves
2 as a houseparent who is:

3 (i) Directly involved in caring for children who
4 reside in residential facilities of the nonprofit child welfare agency and
5 who are orphans, in foster care, abused, neglected, abandoned, homeless, in
6 need of supervision, or otherwise in crisis situations that lead to out-of-
7 home placements; and

8 (ii) Compensated at an annual rate of not less than
9 thirteen thousand dollars (\$13,000) or at an annual rate of not less than ten
10 thousand dollars (\$10,000) if the employee resides in the residential
11 facility and receives board and lodging at no cost;

12 (N) An employee employed in connection with the
13 publication of a weekly, semiweekly, or daily newspaper with a circulation:

14 (i) Of less than four thousand (4,000); and

15 (ii) The major part of which is within the county
16 where the newspaper is published or counties contiguous to the county where
17 the newspaper is published;

18 (O) An employee employed on a casual basis in domestic
19 service employment to provide:

20 (i) Babysitting services; or

21 (ii) Companionship services for individuals who are
22 unable to care for themselves because of age or infirmity;

23 (P) An employee engaged in the delivery of newspapers to
24 retail subscribers; or

25 (Q) A home worker engaged in:

26 (i) Making wreaths composed principally of natural
27 holly, pine, cedar, or other evergreens; and

28 (ii) Harvesting natural holly, pine, cedar, and
29 other evergreens used in making such wreaths;

30
31 SECTION 2. Arkansas Code § 11-4-211 is amended to read as follows:

32 11-4-211. Overtime. ~~{Effective October 1, 2006.}~~

33 (a) Except as otherwise provided in this section and §§ 11-4-210 and
34 11-4-212, no employer shall employ any of his or her employees for a work
35 week longer than forty (40) hours unless the employee receives compensation
36 for his or her employment in excess of the hours above specified at a rate

1 not less than one and one-half (1 1/2) times the regular rate of pay at which
 2 he or she is employed.

3 ~~(b) However, employees of hotels, restaurants, and tourist attractions~~
 4 ~~that have an annual sales volume of less than five hundred thousand dollars~~
 5 ~~(\$500,000) and which are subject to the provisions of this subchapter shall~~
 6 ~~be compensated at one and one half (1 1/2) times the regular hourly rate of~~
 7 ~~pay for all hours worked in excess of:~~

8 ~~(1) Forty four (44) hours in a work week, beginning July 1,~~
 9 ~~1991; and~~

10 ~~(2) Forty (40) hours in a work week beginning July 1, 1992.~~

11 ~~(e)(b)~~ The provisions regarding the payment of wages at one and one-
 12 half (1 1/2) times the regular rate of pay for overtime services shall not be
 13 applicable with respect to agricultural employees.

14 ~~(d)(c)~~ Neither the provisions of this section nor the provisions of
 15 any other law of this state shall be construed to require the payment of
 16 compensation at a greater rate than the normal rate for services performed by
 17 agricultural employees in excess of forty (40) hours per week.

18 ~~(e)(d)~~ This section shall not apply to any employee exempt from the
 19 overtime requirements of the federal Fair Labor Standards Act pursuant to the
 20 provisions of 29 U.S.C. § 213(b)(1)-(24) and (b)(28)-(30), as they exist on
 21 March 1, 2006.

22 ~~(f)(e)~~ No public agency shall be deemed to have violated this section
 23 with respect to the employment of any employee in fire protection activities
 24 or law enforcement activities, including security personnel in correctional
 25 institutions, provided that the public agency pays overtime pay in compliance
 26 with 29 U.S.C. § 207(k), as it exists on March 1, 2006.

27 ~~(g)(f)~~ In lieu of overtime compensation, the State of Arkansas and any
 28 political subdivision of the state may award compensatory time off at a rate
 29 of not less than one and one-half (1 1/2) hours for each hour of employment
 30 for which overtime compensation is required. The compensatory time off may be
 31 provided only:

32 (1)(A) Pursuant to applicable provisions of a collective
 33 bargaining agreement, memorandum of understanding, or other agreement between
 34 the public agency and representatives of such employees; ~~or.~~

35 (B) In the case of employees not covered by subdivision
 36 ~~(g)(1)(f)(1)~~ of this section, an agreement or understanding arrived at

1 between the employer and employee before the performance of the work; and

2 (2) If the employee has not terminated employment and has not
3 accrued compensatory time in excess of the following:

4 (A) Four hundred eighty (480) hours for police,
5 firefighters, emergency response personnel, and employees engaged in seasonal
6 activities; or

7 (B) Two hundred forty (240) hours for any public employee
8 not otherwise exempt or covered by subdivision ~~(g)(2)(A)~~(f)(2)(A) of this
9 section.

10 (g) By rule or regulation, the Director of the Department of Labor may
11 authorize employment in excess of the standard set by subsection (a) of this
12 section or may authorize the calculation of overtime on a basis other than
13 the regular rate of pay required by subsection (a) of this section for
14 employment:

15 (1) Necessitating irregular hours of work;

16 (2) At a piece rate;

17 (3) Paying on a commission basis in a retail or service
18 establishment;

19 (4) In a hospital or enterprise engaged in the care of the
20 sick, the aged, or the mentally ill;

21 (5) By an independently-owned-and-controlled local
22 enterprise engaged in the wholesale or bulk distribution of petroleum
23 products; and

24 (6) Under a collective bargaining agreement.

25
26 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
27 General Assembly of the State of Arkansas that Act 15 of the 1st
28 Extraordinary Session of 2006 raised the state minimum wage and enlarged its
29 application. It is further found that there is a need to parallel certain
30 provisions of federal labor law in order to prevent widespread disruption of
31 the payroll practices of Arkansas employers that would result in increased
32 business costs. It is further found that those increased business costs
33 would place Arkansas employers in a competitive disadvantage by comparison to
34 employers in other states and would result in irreparable economic harm
35 Arkansas employers and their employees. Therefore, an emergency is declared
36 to exist, and this act being immediately necessary for the preservation of

1 the public peace, health, and safety shall become effective on:

2 (1) The date of its approval by the Governor;

3 (2) If the bill is neither approved nor vetoed by the Governor,
4 the expiration of the period of time during which the Governor may veto the
5 bill; or

6 (3) If the bill is vetoed by the Governor and the veto is
7 overridden, the date the last house overrides the veto.

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