

H. B. 2243

(By Delegate Rodighiero)

[Introduced January 23, 2015; referred to the
Committee on Industry and Labor then Finance.]

A BILL to amend and reenact §21-5C-3 of the Code of West Virginia, 1931, as amended, relating to minimum wage and maximum hours standards for employers.

Be it enacted by the Legislature of West Virginia:

That §21-5C-3 of the Code of West Virginia, 1931, 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.

(a) On and after July 1, 1980, no employer shall employ any of his or her employees for a workweek longer than forty hours, unless ~~such~~ the employee receives compensation for his or her employment in excess of the hours above specified at a rate of not less than one and one-half times the regular rate at which he or she is employed. When an employee is required to work on a state recognized holiday, that employee shall be paid at a rate of not less than one and one-half times the

1 regular rate at which he or she is employed irregardless if that shift is in excess of a forty-hour
2 workweek.

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

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

9 (2) Payments made for occasional periods when no work is performed due to vacation,
10 holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable
11 payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of
12 his or her employer's interests and properly reimbursable by the employer, and other similar
13 payments to an employee which are not made as compensation for his or her hours of employment;

14 (3) Sums paid in recognition of services performed during a given period if either: (a) Both
15 the fact that payment is to be made and the amount of the payment are determined at the sole
16 discretion of the employer at or near the end of the period and not pursuant to any prior contract,
17 agreement or promise causing the employee to expect ~~such~~ the payments regularly; or (b) the
18 payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings
19 plan, meeting the requirements of the commissioner set forth in appropriate regulation which he or
20 she shall issue, having due regard among other relevant factors, to the extent to which the amounts
21 paid to the employee are determined without regard to hours of work, production or efficiency; or
22 (c) the payments are talent fees (as such talent fees are defined and delimited by regulations of the

1 commissioner) paid to performers, including announcers, on radio and television programs;

2 (4) Contributions irrevocably made by an employer to a trustee or third person pursuant to
3 a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar
4 benefits for employees;

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

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

13 (7) Extra compensation provided by a premium rate paid to the employee, in pursuance of
14 an applicable employment contract or collective bargaining agreement, for work outside of the hours
15 established in good faith by the contract or agreement as the basic, normal or regular workweek
16 where ~~such~~ the premium rate is not less than one and one-half times the rate established in good faith
17 by the contract or agreement for like work performed during ~~such~~ the workweek.

18 (c) No employer ~~shall~~ may be ~~deemed~~ determined to have violated subsection (a) by
19 employing any employee for a workweek in excess of the maximum workweek applicable to ~~such~~
20 the employee under subsection (a) if ~~such~~ the employee is employed pursuant to a bona fide
21 individual contract, or pursuant to an agreement made as a result of collective bargaining by
22 representatives of employees, if the duties of ~~such~~ the employee necessitate irregular hours of work,

1 and the contract or agreement: (1) Specifies a regular rate of pay of not less than the minimum
2 hourly rate provided in section two and compensation at not less than one and one-half times ~~such~~
3 the rate for all hours worked in excess of ~~such~~ the maximum workweek; and (2) provides a weekly
4 guaranty of pay for not more than sixty hours based on the rates so specified.

5 (d) No employer ~~shall~~ may be ~~deemed~~ determined to have violated subsection (a) by
6 employing any employee for a workweek in excess of the maximum workweek applicable to ~~such~~
7 the employee under ~~such~~ that subsection if, pursuant to an agreement or understanding arrived at
8 between the employer and the employee before performance of the work, the amount paid to the
9 employee for the number of hours worked by him or her in ~~such~~ the workweek in excess of the
10 maximum workweek applicable to ~~such~~ the employee under ~~such~~ that subsection:

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

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

17 (3) Is computed at a rate not less than one and one-half times the rate established by such
18 agreement or understanding as the basic rate to be used in computing overtime compensation
19 thereunder: *Provided*, That the rate so established shall be authorized by regulation by the
20 commissioner as being substantially equivalent to the average hourly earnings of the employee,
21 exclusive of overtime premiums, in the particular work over a representative period of time; and if
22 (i) the employee's average hourly earnings for the workweek exclusive of payments described in

1 subdivisions (1) through (7) of subsection (b) are not less than the minimum hourly rate required by
2 applicable law, and (ii) extra overtime compensation is properly computed and paid on other forms
3 of additional pay required to be included in computing the regular rate.

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

6 (f) (1) Employees of county and municipal governments may receive, in accordance with this
7 subsection and in lieu of overtime compensation, compensatory time off at a rate not less than one
8 and one-half hours for each hour of employment for which overtime is required pursuant to this
9 section.

10 (2) County and municipal governments may provide compensatory time under subdivision
11 (1) of this subsection, only pursuant to a written agreement arrived at between the employer and
12 employee before the performance of the work, and recorded in the employer's record of hours
13 worked, and if the employee has not accrued compensatory time in excess of the limit prescribed in
14 subdivision (3) of this subsection. Any written agreement may be modified at the request of either
15 the employer or the employee, but under no circumstances shall changes in the agreement deny an
16 employee compensatory time heretofore acquired.

17 (3) An employee may accrue up to four hundred eighty hours of compensatory time if the
18 employee's work is a public safety activity, an emergency response activity or a seasonal activity.
19 An employee engaged in other work for a county or municipal government may accrue up to two
20 hundred forty hours of compensatory time. Any such employee who has accrued four hundred eighty
21 or two hundred forty hours of compensatory time, as the case may be, shall for additional overtime
22 hours of work, be paid overtime compensation. If compensation is paid to an employee for accrued

1 compensatory time off, ~~such~~ the compensation shall be paid at the regular rate earned by the
2 employee at the time the employee receives ~~such~~ payment.

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

6 (A) The average regular rate received by ~~such~~ the employee during the last three years of the
7 employee's employment; or

8 (B) The final regular rate received by ~~such~~ the employee, whichever is higher.

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

10 (A) Who has accrued compensatory time off authorized to be provided under subdivision (1)
11 of this subsection; and

12 (B) Who has requested the use of ~~such~~ compensatory time, shall be permitted by the
13 employee's employer to use ~~such~~ the time within a reasonable time after making the request if the
14 use of the compensatory time does not unduly disrupt the operation of the public agency.
15 Compensatory time must be used within one year from the time it was acquired.

16 (6) For purposes of this subsection the terms "compensatory time" and "compensatory time
17 off" mean hours during which an employee is not working, which are not counted as hours worked
18 during the applicable workweek or other work period for purposes of overtime compensation, and
19 for which the employee is compensated at the employee's regular rate.

NOTE: The purpose of this bill is to provide overtime pay for all employees who are required to work holidays regardless if the holiday hours are in excess of a forty-hour workweek.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.