

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

## **House Bill 2048**

BY DELEGATE FOSTER

[ Introduced January 9, 2019; Referred  
to the Committee on Industry and Labor then the  
Judiciary.]

1 A BILL to amend and reenact §21-5C-1 of the Code of West Virginia, 1931, as amended, relating  
 2 to the definition of an “employee” for purposes of payment of minimum wages, maximum  
 3 hours, and overtime compensation; and exempting persons employed by seasonal  
 4 recreational establishments from the definition of an “employee” for those purposes.

*Be it enacted by the Legislature of West Virginia:*

**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 his or her duly authorized  
 3 representatives.

4 (b) “Wage and hour director” means the wage and hour director appointed by the  
 5 Commissioner of Labor as chief of the Wage and Hour Division.

6 (c) “Wage” means compensation due an employee by reason of his or her employment.

7 (d) “Employ” means to hire or permit to work.

8 (e) “Employer” includes the State of West Virginia, its agencies, departments and all its  
 9 political subdivisions, any individual, partnership, association, public or private corporation, or any  
 10 person or group of persons acting directly or indirectly in the interest of any employer in relation  
 11 to an employee; and who employs during any calendar week six or more employees as herein  
 12 defined in any one separate, distinct and permanent location or business establishment: *Provided,*  
 13 That prior to January 1, 2015, the term “employer” does not include any individual, partnership,  
 14 association, corporation, person or group of persons or similar unit if 80 percent of the persons  
 15 employed by him or her are subject to any federal act relating to minimum wage, maximum hours  
 16 and overtime compensation: *Provided, however,* That after December 31, 2014, for the purposes  
 17 of §21-5C-3 of this code, the term “employer” does not include any individual, partnership,

18 association, corporation, person or group of persons or similar unit if 80 percent of the persons  
19 employed by him or her are subject to any federal act relating to maximum hours and overtime  
20 compensation.

21 (f) "Employee" includes any individual employed by an employer but shall not include: (1)  
22 Any individual employed by the United States; (2) any individual engaged in the activities of an  
23 educational, charitable, religious, fraternal or nonprofit organization where the employer-  
24 employee relationship does not in fact exist, or where the services rendered to such organizations  
25 are on a voluntary basis; (3) newsboys, shoeshine boys, golf caddies, pinboys and pin chasers in  
26 bowling lanes; (4) traveling salesmen and outside salesmen; (5) services performed by an  
27 individual in the employ of his or her parent, son, daughter or spouse; (6) any individual employed  
28 in a bona fide professional, executive or administrative capacity; (7) any person whose  
29 employment is for the purpose of on-the-job training; (8) any person having a physical or mental  
30 handicap so severe as to prevent his or her employment or employment training in any training  
31 or employment facility other than a nonprofit sheltered workshop; (9) any individual employed in  
32 a boys or girls summer camp; (10) any person 62 years of age or over who receives old-age or  
33 survivors benefits from the Social Security Administration; (11) any individual employed in  
34 agriculture as the word agriculture is defined in the Fair Labor Standards Act of 1938, as  
35 amended; (12) any individual employed as a firefighter by the state or agency thereof; (13) ushers  
36 in theaters; (14) any individual employed on a part-time basis who is a student in any recognized  
37 school or college; (15) any individual employed by a local or interurban motorbus carrier; (16) so  
38 far as the maximum hours and overtime compensation provisions of this article are concerned,  
39 any salesman, parts man or mechanic primarily engaged in selling or servicing automobiles,  
40 trailers, trucks, farm implements, aircraft if employed by a nonmanufacturing establishment  
41 primarily engaged in the business of selling such vehicles to ultimate purchasers; (17) any  
42 employee with respect to whom the United States Department of Transportation has statutory  
43 authority to establish qualifications and maximum hours of service; (18) any person employed on

44 a per diem basis by the Senate, the House of Delegates, or the Joint Committee on Government  
45 and Finance of the Legislature of West Virginia, other employees of the Senate or House of  
46 Delegates designated by the presiding officer thereof, and additional employees of the Joint  
47 Committee on Government and Finance designated by such joint committee; ~~or~~ (19) any person  
48 employed as a seasonal employee of a commercial whitewater outfitter where the seasonal  
49 employee works less than seven months in any one calendar year and, in such case, only for the  
50 limited purpose of exempting the seasonal employee from the maximum wage provisions of §21-  
51 5C-3 of this code; or (20) any person exempted from the definition of "employee" for the purpose  
52 of the Minimum Wages and Maximum Hours provisions of The Fair Labor Standards Act of 1938,  
53 as amended, by the exemption for employees of seasonal amusement or recreational  
54 establishments under 29 U.S.C. § 213(a)(3).

55 (g) "Workweek" means a regularly recurring period of 168 hours in the form of seven  
56 consecutive 24-hour periods, need not coincide with the calendar week, and may begin any day  
57 of the calendar week and any hour of the day.

58 (h) "Hours worked" means the hours for which an employee is employed: *Provided*, That  
59 in determining hours worked for the purposes of §21-5C-2 and §21-5C-3 of this code, there shall  
60 be excluded any time spent in changing clothes or washing at the beginning or end of each  
61 workday, time spent in walking, riding or traveling to and from the actual place of performance of  
62 the principal activity or activities which ~~such~~ the employee is employed to perform and activities  
63 which are preliminary to or postliminary to ~~said~~ the principal activity or activities, subject to ~~such~~  
64 exceptions ~~as~~ the commissioner may by rules ~~and regulations~~ define.

NOTE: The purpose of this bill is to exclude seasonal amusement park workers from the definition of "employee" for purposes of payment of minimum wages, maximum hours, and overtime compensation.

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