

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2017

BY DELEGATE RODIGHIERO

[Introduced February 8, 2017; Referred
to the Committee on Industry and Labor then Finance]

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

Be it enacted by the Legislature of West Virginia:

1 That §21-5C-3 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted to read as follows:

**ARTICLE 5C. MINIMUM WAGE AND MAXIMUM HOUR STANDARDS FOR
EMPLOYEES.**

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

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

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

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

14 (2) Payments made for occasional periods when no work is performed due to vacation,
15 holiday, illness, failure of the employer to provide sufficient work, or other similar cause;
16 reasonable payments for traveling expenses, or other expenses, incurred by an employee in the
17 furtherance of his or her employer's interests and properly reimbursable by the employer, and

18 other similar payments to an employee which are not made as compensation for his or her hours
19 of employment;

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

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

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

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

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

49 (c) No employer ~~shall~~ may be ~~deemed~~ determined to have violated subsection (a) by
50 employing any employee for a workweek in excess of the maximum workweek applicable to ~~such~~
51 the employee under subsection (a) if ~~such~~ the employee is employed pursuant to a bona fide
52 individual contract, or pursuant to an agreement made as a result of collective bargaining by
53 representatives of employees, if the duties of ~~such~~ the employee necessitate irregular hours of
54 work, and the contract or agreement: (1) Specifies a regular rate of pay of not less than the
55 minimum hourly rate provided in section two and compensation at not less than one and one-half
56 times ~~such~~ the rate for all hours worked in excess of ~~such~~ the maximum workweek; and (2)
57 provides a weekly guaranty of pay for not more than sixty hours based on the rates so specified.

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

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

67 (2) In the case of an employee performing two or more kinds of work for which different
68 hourly or piece rates have been established, is computed at rates not less than one and one-half

69 times ~~such~~ the bona fide rates applicable to the same work when performed during nonovertime
70 hours; or

71 (3) Is computed at a rate not less than one and one-half times the rate established by such
72 agreement or understanding as the basic rate to be used in computing overtime compensation
73 thereunder: *Provided*, That the rate so established shall be authorized by regulation by the
74 commissioner as being substantially equivalent to the average hourly earnings of the employee,
75 exclusive of overtime premiums, in the particular work over a representative period of time; and if
76 (i) the employee's average hourly earnings for the workweek exclusive of payments described in
77 subdivisions (1) through (7) of subsection (b) are not less than the minimum hourly rate required
78 by applicable law, and (ii) extra overtime compensation is properly computed and paid on other
79 forms of additional pay required to be included in computing the regular rate.

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

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

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

93 (3) An employee may accrue up to four hundred eighty hours of compensatory time if the
94 employee's work is a public safety activity, an emergency response activity or a seasonal activity.

95 An employee engaged in other work for a county or municipal government may accrue up to two
96 hundred forty hours of compensatory time. Any ~~such~~ employee who has accrued four hundred
97 eighty or two hundred forty hours of compensatory time, as the case may be, shall for additional
98 overtime hours of work, be paid overtime compensation. If compensation is paid to an employee
99 for accrued compensatory time off, ~~such~~ the compensation shall be paid at the regular rate earned
100 by the employee at the time the employee receives ~~such~~ payment.

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

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

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

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

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

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

114 (6) For purposes of this subsection the terms "compensatory time" and "compensatory
115 time off" mean hours during which an employee is not working, which are not counted as hours
116 worked during the applicable workweek or other work period for purposes of overtime
117 compensation, and 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 a heading or the present law and underscoring indicates new language that would be added.