

2021 -- S 0138

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- OVERTIME WAGES

Introduced By: Senators Calkin, Mack, Anderson, Mendes, Bell, Valverde, Murray, and
Quezada

Date Introduced: January 26, 2021

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 28-12-4.3 of the General Laws in Chapter 28-12 entitled "Minimum
2 Wages" is hereby amended to read as follows:

3 **28-12-4.3. Exemptions.**

4 (a) The provisions of §§ 28-12-4.1 and 28-12-4.2 do not apply to the following employees:

5 (1) Any employee of a summer camp when it is open no more than six (6) months of the
6 year.

7 (2) Police officers.

8 (3) Employees of the state or political subdivision of the state who may elect through a
9 collective bargaining agreement, memorandum of understanding, or any other agreement between
10 the employer and representatives of the employees, or if the employees are not represented by an
11 exclusive bargaining agent, through an agreement or understanding arrived at between the
12 employer and the employee prior to the performance of work, to receive compensatory time off for
13 hours worked in excess of forty (40) in a week. The compensatory hours shall at least equal one
14 and one-half (1 1/2) times the hours worked over forty (40) in a week. If compensation is paid to
15 an employee for accrued compensatory time, the compensation shall be paid at the regular rate
16 earned by the employee at the time of payment. At the time of termination, unused accrued
17 compensatory time shall be paid at a rate not less than:

18 (i) The average regular rate received by the employee during the last three (3) years of the
19 employee's employment; or

1 (ii) The final regular rate received by the employee, whichever is higher.

2 (4) Any employee employed in a bona fide executive, administrative, or professional
3 capacity, as defined by the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 et seq., compensated
4 for services on a salary basis of not less than ~~two hundred dollars (\$200)~~ one thousand thirty-six
5 dollars (\$1,036) per week, and beginning on January 1, 2024, and every year thereafter, on an
6 updated salary basis of not less than the fortieth percentile of weekly earnings of full-time
7 nonhourly workers in the Northeast Census Region in the second quarter of the year preceding the
8 update as published by the Federal Bureau of Labor Statistics.

9 (5) Any employee as defined in subsection (a)(4) of this section unless the wages of the
10 employee, if computed on an hourly basis, would violate the applicable minimum wage law.

11 (6) Any salaried employee of a nonprofit national voluntary health agency who elects to
12 receive compensatory time off for hours worked in excess of forty (40) hours per week.

13 (7) Any employee, including drivers, driver's helpers, mechanics, and loaders of any motor
14 carrier, including private carriers, with respect to whom the U.S. Secretary of Transportation has
15 power to establish qualifications and maximum hours of service pursuant to the provisions of 49
16 U.S.C. § 31502.

17 (8) Any employee who is a salesperson, parts person, or mechanic primarily engaged in
18 the sale and/or servicing of automobiles, trucks, or farm implements, and is employed by a non-
19 manufacturing employer primarily engaged in the business of selling vehicles or farm implements
20 to ultimate purchasers, to the extent that the employers are exempt under the federal Wage-Hour
21 and Equal Pay Act, 29 U.S.C. § 201 et seq. and 29 U.S.C. § 213(b)(10); provided, that the
22 employee's weekly, bi-weekly, or monthly actual earnings exceed an amount equal to the
23 employee's basic contractual hourly rate of pay times the number of hours actually worked plus the
24 employee's basic contractual hourly rate of pay times one-half (1/2) the number of hours actually
25 worked in excess of forty (40) hours per week.

26 (9) Any employee employed in agriculture; however, this exemption applies to all
27 agricultural enterprises that produce greenhouse crops, fruit and vegetable crops, herbaceous crops,
28 sod crops, viticulture, viniculture, floriculture, feed for livestock, forestry, dairy farming,
29 aquaculture, the raising of livestock, furbearing animals, poultry and eggs, bees and honey,
30 mushrooms, and nursery stock. This exemption also applies to nursery workers.

31 (10) Any employee of an air carrier subject to the provisions of 45 U.S.C. § 181 et seq., of
32 the Railway Labor Act when the hours worked by that employee in excess of forty (40) in a work
33 week are not required by the air carrier, but are arranged through a voluntary agreement among
34 employees to trade scheduled work hours.

1 (b) Nothing in this section exempts any employee who under applicable federal law is
2 entitled to overtime pay or benefits related to overtime pay.

3 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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RELATING TO LABOR AND LABOR RELATIONS -- OVERTIME WAGES

1 This act would exempt certain executive, administrative, and professional employees from
2 overtime pay if their weekly wages exceed one thousand thirty-six dollars (\$1,036), an increase
3 from the current two hundred dollars (\$200). Beginning on January 1, 2024, the weekly wage shall
4 be updated to not less than the fortieth percentile of weekly earnings of full-time nonhourly workers
5 in the Northeast Census Region in the second quarter of the year preceding the update as published
6 by the Federal Bureau of Labor Statistics.

7 This act would take effect upon passage.

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