

CHAPTER 294.

[Sub. S. B. 424.]

WASHINGTON MINIMUM WAGE AND HOUR ACT.

AN ACT relating to wages and other conditions of employment for employes to be known as the Washington minimum wage and hour act; and providing penalties.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. As used in this act:

Definitions.

(1) "Director" means the director of labor and industries;

"Director."

(2) "Wage" means compensation due to an employee by reason of his employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges, or allowances as may be permitted by regulations of the director under section 5;

"Wage."

(3) "Employ" includes to suffer or to permit to work;

"Employ."

(4) "Employer" includes any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee;

"Employer."

(5) "Employee" includes any individual employed by an employer but shall not include:

"Employee."

(a) any individual employed (i) on a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wild life, or in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance

of such farm and its tools and equipment; or (ii) in packing, packaging, grading, storing or delivering to storage, or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; and the exclusions from the term "employee" provided in this item shall not be deemed applicable with respect to commercial canning, commercial freezing, or any other commercial processing, or with respect to services performed in connection with the cultivation, raising, harvesting and processing of oysters or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(b) any individual employed in domestic service in or about a private home;

(c) any individual employed in a bona fide executive, administrative, or professional capacity or in the capacity of outside salesman (as such terms are defined and delimited by regulations of the director);

(d) any individual employed by the United States;

(e) any individual engaged in the activities of an educational, charitable, religious, or nonprofit organization where the employer-employee relationship does not in fact exist or where the services are rendered to such organizations gratuitously;

(f) any newspaper vendor or carrier;

(g) any carrier subject to regulation by Part I of the Interstate Commerce Act;

(h) any individual engaged in forest protection and fire prevention activities;

(i) any person employed by a funeral director or operator of an emergency ambulance service;

"Occupation."

(6) "Occupation" means any occupation, service, trade, business, industry, or branch or group of in-

dustries or employment or class of employment in which employees are gainfully employed.

SEC. 2. Every employer shall pay to each of his employees wages at a rate of not less than one dollar per hour except as may be otherwise provided under this act.

Minimum wage set.

SEC. 3. (1) Except as otherwise provided in this section, no employer shall employ any of his employees for a workday longer than eight hours or for a workweek longer than forty hours, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed. Every employee is entitled to have his overtime computed on both a daily and weekly basis each week and shall be paid either his daily or weekly overtime whichever is greater.

Eight hour day, forty hour week—Overtime rates, computation, exceptions.

(2) No employer shall be deemed to have violated subsection (1) by employing any employee for a workday or workweek in excess of that specified in such subsection without paying the compensation for overtime employment prescribed therein if such employee is so employed—

(a) for a period or periods of not more than fourteen workweeks in the aggregate in any calendar year in packing or preparing for market, canning, freezing, dehydrating or preserving, perishable or seasonal fish, fruits or vegetables and in any other industry found by the director to be of a seasonal nature, and if such employee receives compensation for employment in excess of twelve hours in any workday, or for employment in excess of fifty-six hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed;

(b) in the processing of sugar beets, sugar-beet molasses, sugarcane, or maple sap, into sugar (but not refined sugar) or into sirup; and in the case of

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tions.

an employer engaged in the first processing of, or in canning, freezing, packing, or dehydrating of perishable or seasonal fresh fruits or vegetables during a period or periods of not more than fourteen work-weeks in the aggregate in any calendar year;

(c) in accordance with a mutual agreement or arrangement between two employees for exchanging work hours.

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

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

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

(c) sums paid in recognition of services performed during a given period if either; (i) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly; or (ii) the payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan, meeting the re-

quirements of the director set forth in appropriate regulations which he shall issue, having due regard among other relevant factors, to the extent to which the amounts paid to the employee are determined without regard to hours of work, production, or efficiency; or (iii) the payments are talent fees (as such talent fees are defined and delimited by regulations of the director) paid to performers, including announcers, on radio and television programs;

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

(e) extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or workweek because such hours are hours worked in excess of eight in a day or forty in a workweek or in excess of the employee's normal working hours or regular working hours, as the case may be;

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

(g) extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment, contract or collective-bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday (not exceeding eight hours) or workweek (not exceeding forty hours) where such premium rate is not less than one and one-half times the rate established in

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good faith by the contract or agreement for like work performed during such workday or workweek.

(4) No employer shall be deemed to have violated subsection (1) by employing any employee for a workday in excess of eight hours or a workweek in excess of forty hours if such employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective-bargaining by representatives of employees, if the duties of such employee necessitate irregular hours of work and the contract or agreement; (a) specifies a regular rate of pay of not less than the minimum hourly rate provided in section 2 of this act and compensation at not less than one and one-half times such rate for all hours worked in excess of eight in any workday or in excess of forty in any workweek; and (b) provides a weekly guaranty of pay for not more than sixty hours based on the rates so specified.

(5) No employer shall be deemed to have violated subsection (1) by employing any employee for a workday in excess of eight hours or for a workweek in excess of forty hours if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by him in such workday or workweek in excess of eight hours or forty hours, respectively—

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

(b) in the case of an employee performing two or more kinds of work for which different hourly or piece rates have been established, is computed at rates not less than one and one-half times such bona

vide rates applicable to the same work when performed during nonovertime hours; or

(c) is computed at a rate not less than one and one-half times the rate established by such agreement or understanding as the basic rate to be used in computing overtime compensation thereunder: *Provided*, That the rate so established by such agreement shall be authorized by regulation by the director as being substantially equivalent to the average hourly earnings of the employee, exclusive of over-time premiums, in the particular work over a representative period of time;

and if (i) the employee's average hourly earnings for the workweek exclusive of payments described in paragraphs (a) through (g) of subsection (3) are not less than the minimum hourly rate required by applicable law, and (ii) extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

(6) Extra compensation paid as described in paragraphs (e), (f), and (g) of subsection (3) shall be creditable toward overtime compensation payable pursuant to this section 3.

SEC. 4. (1) The director or his designated representatives may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this act, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this act, or which may aid in the enforcement of the provisions of this act.

Investigations.

(2) With the consent and cooperation of federal agencies charged with the administration of federal

Federal
agencies
utilized.

labor laws, the director may, for the purpose of carrying out his functions and duties under this act, utilize the services of federal agencies and their employees and, notwithstanding any other provision of law, may reimburse such federal agencies and their employees for services rendered for such purposes.

Employers'
records,
reports.

(3) Every employer subject to any provision of this act or of any order issued under this act shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and shall make reports therefrom to the director as he shall prescribe by regulation as necessary or appropriate for the enforcement of the provisions of this act or the regulations thereunder.

Regulations,
industrial
homework.

(4) The director is authorized to make such regulations regulating, restricting, or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this act, and all existing regulations of the director relating to industrial homework are hereby continued in full force and effect.

Adminis-
trative
regulations.

SEC. 5. For any occupation, the director shall make and revise such administrative regulations, including definitions of terms, as he may deem appropriate to carry out the purposes of this act or necessary to prevent the circumvention or evasion thereof and to safeguard the minimum wage rates thereby established. Such regulations may include, but are not limited to, regulations defining and governing learners and apprentices, their number, proportion, and length of service; part-time pay; bonuses; overtime pay; special pay for special or extra work; and permitted charges to employees or allowances for board, lodging, apparel, or other fa-

cilities or services customarily furnished by employers to employees.

SEC. 6. The director, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations provide for (1) the employment of learners, of apprentices, and of messengers employed primarily in delivering letters and messages, under special certificates issued pursuant to regulations of the director, at such wages lower than the minimum wage applicable under section 2 of this act and subject to such limitations as to time, number, proportion, and length of service as the director shall prescribe, and (2) the employment of individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, under special certificates issued by the director, at such wages lower than the minimum wage applicable under section 2 of this act and for such period as shall be fixed in such certificates.

Special certificates for certain employees
—Subminimum wage.

SEC. 7. Every employer subject to any provision of this act or of any regulation issued under this act shall make, and keep in or about the premises wherein any employee is employed, a record of the name, address, and occupation of each of his employees, the rate of pay, and the amount paid each pay period to each such employee, the hours worked each day and each work week by such employee, and such other information as the director shall prescribe by regulation as necessary or appropriate for the enforcement of the provisions of this act or of the regulations thereunder. Such records shall be open for inspection or transcription by the director or his authorized representative at any reasonable time. Every such employer shall furnish to the director or to his authorized representative on demand a sworn statement of such records and information upon forms prescribed or approved by the director.

Employment records kept and available.

New or modified regulations—
Judicial review—Stay.

SEC. 8. (1) As new regulations or changes or modification of previously established regulations are proposed, the director shall call a public hearing for the purpose of the consideration and establishment of such regulations following the procedures used in the promulgation of standards of safety under RCW 49.16.080, 49.16.090 and 49.16.100, as amended.

(2) Any interested party may obtain a review of the director's findings and order in the superior court of county of petitioners' residence by filing in such court within sixty days after the date of publication of such regulation a written petition praying that the regulation be modified or set aside. A copy of such petition shall be served upon the director. The finding of facts, if supported by evidence, shall be conclusive upon the court. The court shall determine whether the regulation is in accordance with law. If the court determines that such regulation is not in accordance with law, it shall remand the case to the director with directions to modify or revoke such regulation. If application is made to the court for leave to adduce additional evidence by any aggrieved party, such party shall show to the satisfaction of the court that such additional evidence is material, and that there were reasonable grounds for the failure to adduce such evidence before the director. If the court finds that such evidence is material and that reasonable grounds exist for failure of the aggrieved party to adduce such evidence in prior proceedings, the court may remand the case to the director with directions that such additional evidence be taken before the director. The director may modify the findings and conclusions, in whole or in part, by reason of such additional evidence.

(3) The judgment and decree of the court shall be final except that it shall be subject to review by the supreme court as in other civil cases.

(4) The proceedings under this section shall not, unless specifically ordered by the court, operate as a stay of an administrative regulation issued under the provisions of this act. The court shall not grant any stay of an administrative regulation unless the person complaining of such regulation shall file in the court an undertaking with a surety or sureties satisfactory to the court for the payment to the employees affected by the regulation, in the event such regulation is affirmed, of the amount by which the compensation such employees are entitled to receive under the regulation exceeds the compensation they actually receive while such stay is in effect.

SEC. 9. (1) Any employer who pays any employee less than wages to which such employee is entitled under or by virtue of this act, shall be liable to such employee affected for the full amount of such wage rate, less any amount actually paid to such employee by the employer, and for costs and such reasonable attorney's fees as may be allowed by the court. Any agreement between such employee and the employer to work for less than such wage rate shall be no defense to such action.

Employer liability for wages less than minimum—Assignment of wage claim.

(2) At the written request of any employee paid less than the wages to which he is entitled under or by virtue of this act, the director may take an assignment under this act or as provided in RCW 49.48.040 of such wage claim in trust for the assigning employee and may bring any legal action necessary to collect such claim, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court.

SEC. 10. (1) Any employer who hinders or delays the director or his authorized representatives in the performance of his duties in the enforcement of this act, or refuses to admit the director or his authorized representatives to any place of employment, or fails to make, keep, and preserve any

Prohibited act, gross misdemeanor.

records as required under the provisions of this act, or falsifies any such record, or refuses to make any record accessible to the director or his authorized representatives upon demand, or refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this act to the director or his authorized representatives upon demand, or pays or agrees to pay wages at a rate less than the rate applicable under this act, or otherwise violates any provision of this act or of any regulation issued under this act shall be deemed in violation of this act and shall, upon conviction therefor, be guilty of a gross misdemeanor.

(2) Any employer who discharges or in any other manner discriminates against any employee because such employee has made any complaint to his employer, to the director, or his authorized representatives that he has not been paid wages in accordance with the provisions of this act, or that the employer has violated any provision of this act, or because such employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to this act, or because such employee has testified or is about to testify in any such proceeding shall be deemed in violation of this act and shall, upon conviction therefor, be guilty of a gross misdemeanor.

Collective
bargaining
unimpaired.

SEC. 11. Nothing in this act shall be deemed to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing in order to establish wages or other conditions of work in excess of the applicable minimum under the provisions of this act.

Act
supplemental.

SEC. 12. This act establishes a minimum standard for wages, hours, and working conditions of all employees in this state, unless exempted herefrom, and is in addition to and supplementary to any other

federal, state, or local law or ordinance, or any rule or regulation issued thereunder. Any standards relating to wages, hours, or other working conditions established by any applicable federal, state or local law or ordinance, or any rule or regulation issued thereunder, which are more favorable to employees than the minimum standards applicable under this act, or any rule or regulation issued hereunder, shall not be affected by this act and such other laws, or rules or regulations, shall be in full force and effect and may be enforced as provided by law: *Provided*, That as to any employer and employment which is subject to the federal fair labor standards act, compliance with such act shall be deemed likewise to constitute compliance with section 1 (5) (c), section 3, section 5 and section 7 of this act.

More favorable standards unaffected.

SEC. 13. If any provision of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of the act and the application thereof to other persons or circumstances shall not be affected thereby.

Severability.

SEC. 14. This act may be known and cited as the "Washington Minimum Wage and Hour Act."

Short title.

Passed the Senate March 11, 1959.

Passed the House March 10, 1959.

Approved by the Governor March 24, 1959.